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Gambling in India

CONTAINING
Commentaries on the

Public Gambling Act III of 1867 as amended up-to-date, Madras Gaming Act III of 1930
as amended up-to-date, Bombay Prevention of Gambling Act IV of 1887 as amended
up to-date, Bengal Public Gambling Act II of 1867 and Appendices containing
U. P. Public Gambling Act, C. P. Public Gambling Act, Punjab Public
Gambling Act, Burma Gambling Act, and various Enactments
pertaining to Gambling in States and other British
Districts Etc. Etc

by

S. M. A. Sami, M.A., Advocate

AND

K. J. Iyer, Vakil

Second Edition, 1947



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PREFACE TO THE SECOND EDITION

The first edition of this book was placed in the market in the year 1938 and had gone out of print within the next 2-3 years. Immediately the war broke out and the difficulties in obtaining paper and labour for printing the books made it out of question for me to place the second edition in the market but now I am thankful to Messrs. Law Book Company, Law Publishers who have helped me in taking up this publication.

All this while I have been on the look out to collect the materials as far as possible to make the book exhaustive and up to date in every respect. The previous edition of the book was confined to the commentary on Public Gambling Act only, but on various suggestions received from my patrons in Bombay, Madras and Bengal where the general Public Gambling Act is not applicable but instead only the local Acts apply I have incorporated the commentaries on these local Acts also with up-to-date amendments and case-law.

The amendments introduced by the various provincial governments in India regarding the Public Gambling Act have been fully incorporated at the appropriate places.

I am sure, this second and improved edition will fill the long-felt demand of the bench and the bar both.

Any suggestions for the improvement of the subsequent editions will be welcomed and given due consideration whenever chance for printing the new edition arises.

1947.

AUTHOR

PREFACE TO THE FIRST EDITION

In this little book of mine I have attempted to supply a longfelt necessity, as cases under the Gambling Act more often present delicate questions of fact and law.

In framing the present Act the Legislature has departed from some of the very important provisions of the Code of Criminal Procedure and the adjective law. I have tried to place before the Legal profession and the Magistracy a general and comparative survey of the law of gaming and have tried to explain the sections fully and to interpret the important words and phrases in the light of the various judicial decisions.

The special provisions contemplated under the Act as also the provisions of other Acts bearing on the Act have been dealt with in a clear and simple manner. The brother members of the profession and the Magistracy I hope will find this book a useful guide in the trial of cases under the Act.

I have incorporated in appendices of the book all the Local Amendments, the notifications and orders of the various Local Governments and up to date digest of the case-law under the Act.

If this little book of mine meets with the kind approbation of my brothers in profession, the Magistracy and the prosecuting staff I shall feel that my labour has not gone for nothing.

MEERUT : }
1st June 1938. }

S. M. A. SAMI.

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INTRODUCTION

Since the dawn of civilization gaming has been looked upon as an evil which leads to idleness, theft and various other vices. At times even innocent games have been prohibited and suppressed. The evil habit of gaming is fraught with danger not only to the state alone but to the individual addicted to it. It drags him into extreme moral degradation and ultimately into extreme poverty, which leaves him no other alternative but a recourse to evil means and utter disappointment, sometimes compels him to commit suicide.

Gaming in India was prohibited under the Hindu and the Mohammedan rule. After the advent of the British rule everything which was an offence under the Mohammedans was recognised as such and the Magistrates had power to punish offences under the General Regulations with six months imprisonment besides fine.

Under the law as it stood before the act of keeping a common gaming house was not punishable as an offence and private gaming was more common than public gambling.

The present law does not prohibit gaming in its entirety but only aims at suppressing gaming in private houses when carried on for the profit or gain of the owner or occupier thereof and also gaming in public.

The Act provides the heaviest penalty for the keepers of such gaming houses but deals more leniently with persons frequenting them as also the persons found in public places.

Gaming in a common gaming house is considered to be of a more serious nature and believed to be mainly responsible for many a heinous crime.

The law provides for an additional penalty of forfeiture of money found in a common gaming house, as also a penalty for refusal to give name and address or giving a false name and address.

The legislature makes further provision for the issue of a warrant for search and the raising of a presumption of guilt against the well-established principle of criminal justice that every man is presumed to be innocent until the contrary is proved.

But this artificial presumption is subject to a rebuttal and the onus is shifted from the prosecution to the subject or the accused who is to prove his innocence.

Punishment.

No hard and fast rules can be laid as to the adjustment of the penalty to the crime because the facts which make up the environment of an offence are so infinitely diversified that comparatively seldom are two crimes exactly identical.

It is a difficult task to fit the penalty with the gravity of the offence. If the offence is of an aggravated type a sentence of imprisonment is obviously more suitable than fine. In case of petty offences or offences of a technical nature a more lenient sentence of fine would very often meet the ends of justice and it is for cases of this type that courts are empowered to take action under Section 526, Criminal Procedure Code, and deal lightly with certain offenders and let them go on probation of good conduct for a certain period or after admonition alone.

Nor should a court lose sight of the theory of a deterrent punishment, but it should be inflicted only in special circumstances.

As a general rule fine is to be imposed in case of first offenders and imprisonment should be resorted to in cases of contumacy and specially more so in case of offences outside the Penal Code. Gambling hardly ranks with offences against person and property.

In prescribing punishments for offences under the Act the Legislature has made a significant departure from the order in which punishments are mentioned in other penal statutes. Strange enough the punishment of fine precedes that of imprisonment for offences under the Act. This appears to have been based on the principle that a man of good character is perhaps tempted to stake something enticed with the temptation of a possible self-aggrandisement. If he is sent to jail he comes out a hardened criminal.

As regards first convictions of persons found in a common gaming house a small fine would in most cases meet the requirements of law and would be sufficient to warn the offenders.

In case of persons convicted for keeping a common gaming house,

substantial fine would, in the first instance, be a proper punishment, but on a second conviction imprisonment may be added [*Emperor versus Chunni*, 1881 A. W. N. 111; *Emperor versus Po Tu*, L. B. R. (1872-92) 428].

The Imperial Act has provided the penalty of fine alternate with imprisonment even in case of previously convicted offenders when an enhanced sentence is desirable and also fixes the maximum of fine and imprisonment under Section 15 of the Act, but the Local Amendment in the Punjab and the Central Provinces have provided for a higher amount of fine and a longer term of imprisonment. They have also changed the order of punishments followed in the Imperial Act in case of a second or a subsequent conviction under Sections 3 and 4 of the Act.

The Local Government of the United Provinces has not touched the amount of fine or the period of imprisonment provided in the Act.

The amendment in the Central Provinces in Section 3 of the Act is practically the same as the Punjab amendment of Section 15 of the Act.

The Central Provinces amendment of Section 3 has gone a step further than the Punjab amendment by providing for a first offence with fine up to a thousand rupees. It also provides for a longer term in case of a second or a subsequent conviction.

It also authorises a court to award imprisonment either with or without fine for a second or a subsequent offence, fixing a minimum term of imprisonment for a period of seven days for a second conviction and a period of one month upon a third or a subsequent conviction.

The Punjab amendment follows the order, the amount and the period of punishment provided in the Central Provinces amendment and appears to have been borrowed from the Central Provinces amendment as it was enacted two years later in the Punjab, though the enactment has been made under different sections of the Act. The Punjab amendment of Section 15-A of the Act is therefore identical with the Central Provinces amendment of Section 15 of the Act.

These amendments have also exceeded the limit of fine under the Act and the Magistrates in these Provinces can impose a fine not exceeding a thousand rupees and imprisonment up to a term of one year

thus authorising a double term than provided under the Act.

The Central Provinces amendment has also exceeded the amount of fine prescribed under Section 4 of the Act and authorises the imposing of a fine of two hundred rupees while the Imperial Act provides for a maximum of one hundred rupees.

Whether offences cognisable.

In order that an offence may be a cognisable offence it is not necessary that every police officer should have the power to arrest without warrant. As the District Superintendent of Police has such power under Section 5 the offence is a cognisable offence. [*Nagarmal versus Emperor*, 196 I. C. 869=194 N. L. J. 465= A.I.R. 1941 Nag. 338.]

Sentence.

A Magistrate cannot exceed the limit prescribed under Section 32, Criminal Procedure Code. (See Section 14 of the Act and Section 12 of the Bengal Public Gambling Act.)

Power to try.

Section 14 of the Act provides that cases under the Gambling Act may be tried by any Magistrate having jurisdiction in the place where the offence is committed irrespective of his powers under the Criminal Procedure Code. The same provision exists in the Bengal Act under Section 12.

Procedure.

The Act provides some special provisions, overriding some of the provisions of the Criminal Procedure Code.

Section 10 of the Act overrides the general provisions of Sections 342 and 343, Criminal Procedure Code, inasmuch as it authorises a Magistrate to examine an accused on oath and affirmation by putting questions, answers to which may tend to incriminate him and also to induce him to make a disclosure under a promise of pardon or an indemnification from prosecution.

Section 11 of the Act overrides the general provisions of Sections 337 and 338, Criminal Procedure Code, as it provides for the examination of the accused before a pardon is granted to him.

The procedure to be followed in trial of offence under Sections 3, 4

and 13 is that of a summons case trial while in case of trial for an offence under Sections 3 and 4 read with Section 15 of the Act the procedure should be that of a warrant case trial.

Investigation and trial.

The ordinary provisions of the Criminal Procedure Code will regulate the investigation and trial of offenders under the Public Gambling Act. [*Nagarmal. versus Emperor*, 196 I.C. 869=1941 N. L. J. 465—A.I.R. 1941 Nag. 338.]

Cross-examination of prosecution witnesses.

The usual opportunities of cross-examination allowed in a summons case trial and warrant case trial are also applicable to trials under the Gambling Act.

Examination of accused.

The provisions of Section 342, Criminal Procedure Code, apply to trials under the Act and the Court must comply with its provisions.

Summary trial.

Under the provisions of Section 260, Criminal Procedure Code, a Magistrate can try summarily cases under the Act.

But if the accused is deaf and dumb, or where the Magistrate takes cognisance upon his own knowledge or suspicion or there is a large number of accused in the case a summary trial is not proper [*Deaf and dumb man*, 8 Bom. L. R. 849; *Hameed*, 3 (4) C. W. N. 330; *Naubat*, 28 Cr. L. J. 140].

Joint trial.

Provisions of Section 239, Criminal Procedure Code, allow a joint trial of persons accused of offences under Sections 3 and 4 of the Act (*Sh. Moti versus Emperor*, 19 I. C. 949; *Bhanamal versus Emperor*, 6 P. R. 1919 Cr.; *Khalinda Ram versus Emperor*, 68 I. C. 845).

Prosecution.

Under the provisions of Section 493, Criminal Procedure Code, a public prosecutor can conduct a case under the Act and a private counsel can also appear and act under his directions.

Withdrawal of prosecution.

Under the provisions of Section 494, Criminal Procedure Code, a

public prosecutor can withdraw from the prosecution of any person under the Act.

Police-officer cannot conduct prosecution.

. . . A police-officer who has taken part in the search cannot be allowed to conduct the prosecution of such persons as provided under Section 495 (4), Criminal Procedure Code.

Previous conviction.

A previous conviction under Sections 3 and 4 of the Act read with Section 15 of the Act can be proved and charged under the provisions of Sections 221, 255 and 258 of the Criminal Procedure Code.

Applicability of Section 562, Criminal Procedure Code.

Section 562, Criminal Procedure Code, as amended by Act XVIII of 1923, authorises Magistrates to take action under this section in case of offenders tried for offences under the Act.

Applicability of Reformatory Schools Act.

The provisions of the Reformatory Schools Act are applicable to the case of persons convicted under the Act. [See Section 4 (a) of the Reformatory Schools Act.]

Separate Convictions.

Offences under Sections 3 and 4 of the Act are distinct offences and a man may be convicted separately under each of them (*Chotey Lal versus Emperor*, 81 L. C. 186).

Confiscation of money or securities for money.

A conviction under Sections 3 and 4 of the Act may entail the forfeiture of money or securities for money found in a common gaming house (*Emperor versus Kifayat*, 41 All. 272). Confiscation of money in case of conviction under Section 13 of the Act is illegal.

Confiscation of money found on the person of the accused is not contemplated under the Act (*Emperor versus Mubarak*, 40 All. 517; *Emperor versus Tula*, 41 All. 366; *Hari Har versus Emperor*, A. L. R. 1938 All. 11=1937 A. L. J. 973 (1); *Emperor versus Ballu Singh*, 1938 A. L. J. 102). The Act does not allow confiscation of the instruments of gaming or their sale-proceeds, but under Section 517,

Criminal Procedure Code, a Magistrate can order the confiscation of money found on *phar* where it is not possible to say to which of the accused it belonged (*Emperor versus Ballu Singh*, 1938 A. L. J. 102).

Destruction of instruments of gaming.

A Magistrate while convicting an accused under Section 3 or 4 of the Act may under the provision of Section 8 of the Act order all the instruments of gaming found therein to be destroyed. When a Magistrate convicts an accused under Section 13 of the Act he is authorised to "order such instruments to be forthwith destroyed."

Payment to informer.

Under the provisions of Section 16 of the Act, a Magistrate is authorised to order any portion of the fines or any part of the moneys or proceeds of the articles to be forfeited, to be paid to the informer.

Recovery of fines.

Section 17 of the Act provides that fines imposed under the Act may be recovered in the manner prescribed by Sections 386, 387 and 388, Criminal Procedure Code.

Payment of fine by instalments and suspension of sentence.

Section 388, Criminal Procedure Code, authorises a Magistrate to suspend the execution of a sentence and release the offender allowing him time to deposit the amount of fine and may in his discretion order the payment of the fine by instalments.

Application of fines.

In the following provinces fines realised are credited to the Municipal Funds :—

United Provinces of Agra and Oudh (Section 114, United Provinces Municipalities Act I of 1916).

Punjab (Section 15 of the Punjab Municipalities Act II of 1922).

Central Provinces (Section 61 of the Criminal Procedure Code (Municipalities Act II of 1922).

Assam (Section 51 of the Assam Municipalities Act I of 1923).

Rewards to police-officers and witnesses.

The Act does not authorise the distribution of fine among the witnesses and police (*Banwari Lal* versus *Emperor*, 50 I. C. 351=1919 Criminal L. J. All. 303).

In the United Provinces the Local Government authorises the giving of reward to police (*vide* G. O. No. 1016/VIII-112—F-14 of 1899 para. 3).

"In regard to all gambling cases the Lieutenant-Governor is pleased to direct under authority vested in him by Section 17 of the Act that whenever the Court considers it desirable that the Police may be rewarded, any balance of the fines realised which has not been granted by the Magistrate to an informer under Section 17 of the Act may be given to the Police in such manner as the District Magistrate and the Superintendent of Police may see fit to allot it."

Appeal.

The Act makes no special provisions for appeals from convictions under the Act. Provisions of Sections 407 and 408, Criminal Procedure Code, relating to appeals shall govern appeals from convictions under the Act.

Revision.

Provisions of Sections 435, 438 and 439, Criminal Procedure Code, relating to revisions also govern orders and judgments passed under the Act.

Defence.

Section 340, Criminal Procedure Code, provides that an accused may of right be defended by a pleader. The accused has a right to be so defended. It is not a question of indulgence but of right. It implies that he shall have reasonable opportunity of getting into communications with his counsel and preparing his defence.

Where the accused were arrested and placed in custody and suddenly called upon to conduct their case without obtaining any legal assistance, the procedure was held to be irregular (*Rajbansi* versus *Emperor*, 1920 All. 268).

A counsel should chalk out a line of defence and adopt an intelligent and plausible theory. It is not his duty to invent defence.

If the case against an accused is strong it will be right on his part to advise his client to throw himself at the mercy of the court as it will have an effect in minimizing the severity of the sentences or possibility of getting the benefit of the provisions of Section 562, Criminal Procedure Code.

The following are some of the points of defence in a case under the Act:—

- (1) That the search warrant is illegal and did not comply with the provisions of Section 5 of the Act.
- (2) That the search was not made in accordance with the provisions of the Act and that the presumption of guilt contemplated by the Act could not be raised.
- (3) That the gaming was carried on for pastime or pleasure on a festival e.g. Devali day.
- (4) That there was no profit or gain to the owner or occupier of such house.
- (5) That the accused was found in a private house and not in a common gaming house as contemplated under the Act.
- (6) That the accused was present therein not for gaming but for some other innocent purpose.
- (7) That no commission was charged by the owner or occupier for the use of such house or for instruments of gaming.
- (8) That no instruments of gaming were found inside such house or on the person of those found therein.
- (9) That the case is the outcome of an enmity with the informer and the witnesses.

- (10) Defence of *alibi*—the force of a defence founded on an *alibi* rests on the strength of Sections 7 and 11 of the Indian Evidence Act. There can be no crime without the opportunity, but there is a wide gulf to be bridged over between opportunity and commission. Defence of *alibi* should be set up only when there is unimpeachable evidence to establish the same and it would be more proper to adopt some other line of defence.

The Public Gambling Act

(III of 1867.)

An Act to provide for the punishment of the public gambling and the keeping of common gaming houses in the North-Western Provinces of the Presidency of Fort William and in the Punjab, Oudh and the Central Provinces.

WHEREAS it is expedient to make provisions for the punishment of public gambling and the keeping of common gaming houses in the territories respectively subject to the Government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William and of the Lieutenant-Governor of the Punjab, and to the Administration of the Chief Commissioner of Oudh and of the Chief Commissioner of the Central Provinces, It is HEREBY enacted as follows :—

NOTES.

Scope and Object.—Gambling was prohibited by Hindu Law and was also prohibited under the Mohammedan rule. On the advent of the British rule gaming was prohibited under the General Regulations and everything which was an offence under the Mohammedan Law was punishable by the magistrate with six months imprisonment, besides fine.

But under the law as it stood at that time persons could not be prosecuted for keeping common gaming houses and it was with this view that the Public Gambling Act was passed in 1867.

The object of the Act is to make provisions for the punishment of gambling in streets or public places and for stopping the practice of making profits by providing a spot of their own selection. In the first place gambling in streets or public places is likely to entice ordinary passerby to join in or follow the bad example and this is why gambling in public is an offence irrespective of the fact that it is carried on for private gain or not, while in the second place it aims at the practice of making a livelihood by attracting people to a place which they would not otherwise frequent. If people gratuitously allow gambling on their private premises, the law does not interfere with them presumably because in that case they have no special inducement to tempt outsiders to join them.¹ It provides for the punishment of public gambling in streets and in common gaming houses².

Nature of the Act.—The Act is of a penal nature and provides for the punishment of gaming within the areas mentioned or to which it is further extended by the Government within whose jurisdiction they are situated.

1. *Emp. v. Jusub Ally*, 29 Bom. 391.

2. *Emp. v. Khyroo*, 2 N. W. P. 289.

It is one of a very stringent character and so its provisions are to be very closely interpreted³.

Preamble.—The preamble shows that the Act was intended to be a penal law for the territories mentioned in it.

The preamble of an Act sets forth the reasons for the particular Act and foreshadows what is intended to be effected by it and it is a key to open the minds of the framers of the Act.

It may be used for clearing up any ambiguity.⁴

"It is to the preamble more specially that we are to look for the reason or spirit of every statute; rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubt purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making and passing the statute itself."⁵

Title.—The title of an Act is undoubtedly part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act itself as a whole and ascertaining its scope. Its object is identification and not description.

Marginal Notes.—It is now well settled that marginal notes to a section do not form part of the statute itself and cannot be referred to for explaining or construing the section.⁶

In *Bulraj Kumar versus Jagatpal Singha*, their Lordships of the Privy Council made the following observation :—

"It is well settled that the marginal notes to the sections of an Act of Parliament cannot be referred for the purpose of construing the Act."

Construction of the Act.—The Act is of a penal character and must be construed strictly.⁷ The language of the Act must not be unduly constrained so as to cover a case not coming directly under its provisions, because it departs from the ordinary rule of evidence in that it places the burden of proof on the accused.⁸

Whenever the language of an Act is ambiguous or doubtful, the courts should always lean against the construction which imposes a burden on the subject.⁹

Words must be given their ordinary meaning unless they are manifestly intended to be used in some other sense, for they must be supposed to have been used by the legislature in the sense they are generally used, and each word must have full weight given to it and must not be unduly distorted or twisted to suit a particular case or support a particular theory.¹⁰

3. *Emp. v. Nga Pu*, L. B. R. 1872-92, page 53

4. *Secretary of State v. Vasudeo*, (1928) 30 Bom. L. R. 1941.

5. *Brett v. Brett*, (1826) 3 Add. 110, 262 Eng. Rep. 456.

6. *D. Bomani v. G. K. Koli*, 1939 Bom. 338.

7. *Emp. v. Narottamdas Moti Ram*, 13 Bom. 681.

8. *Ram Lochan v. Emp.*, L. B. R. (1872-92) 157; *Emp. v. Govind*, 16 Bom. 283.

9. *Emp. v. Jamuddin*, 14 Bom. 170.

10. *Ram Soochan v. Emp.*, L. B. R. (1872-92) p 170.

Interpretation of the Act—It is a cardinal rule of construction of statutes in general that the intention of an enactment should be gathered from the language employed by it and that where the words used are clear and unambiguous it is the duty of the court to give effect to them according to their plain meaning, neither adding to, nor subtracting from them.¹⁰

North-Western Provinces.—The North-Western Provinces and the Province of Oudh are now known as the United Provinces of Agra and Oudh (Gazette of India, dated 22nd March 1902, Part I, page 228).

Extent of Application.—The Act is in force in the Punjab (as amended by the Punjab Act I of 1929), the United Provinces of Agra and Oudh (as amended by the United Provinces Amendment Act I of 1917, Act V of 1919 and Act I of 1925) and the Central Provinces (as amended by the Central Provinces Amendment Act III of 1927). It has also been extended to—

- (1) *Ajmere.*—Ajmere, Bhinae, Kakree, Khurmal, Masuda, Nasirabad, Nayanagar, Pischungan, Pakar, Ramsur, Swai and Srinagar (N.-W. P. Gazette, dated 31st July 1863, page 511).
- (2) *Assam.*—(Gazette of India, dated 26th November 1880, Part 1, page 606).
- (3) *British Baluchistan.*—[British Baluchistan Laws Regulation I of 1890, Section 3 (1.)]
- (4) *Agency Territories.*—(General Act V of 1911, page 470.)
- (5) *Central Provinces.*—(The words were substituted for "the Central Provinces and British Burma" by the Repealing Act I of 1908).
- (6) *Coorg.*—(Coorg Code Edition, 1893, Appendix, page 168.)
- (7) *Tarai Parganas.*—(North-Western Provinces and Oudh Code, 1892, Appendix, page 18.)

Where not applicable.—

Burma.—The Act has ceased to be operative in Burma and has been superseded by the Burma Gambling Act I of 1899.

Bombay.—Bombay has its own Act known as the Bombay Prevention of Gambling Act (IV 1887).

Madras.—Madras has its own Act known as the Madras Gambling Act III of 1890.

Bengal.—Bengal has its own Act known as the Bengal Gambling Act III of 1867 as amended by Act III of 1921.

Judicial Notice of applicability.—A Magistrate should take judicial

10. *Achal Singh v. S. Singh* 29 Oudh Case 51; *Anand Parsad v. Naranda*, 1931 All 162; *Gurdial v. Central Board*, 1928 Lah. 337.

notice of the fact whether the Act has been extended to a particular place or not.¹¹

Interpretation Clause. **Section 1.** In this Act.

"Lieutenant Governor" means the Lieutenant-Governor of the United Provinces of Agra and Oudh or of the Punjab as the case may be.

"Chief Commissioner" means the Chief Commissioner of the Central Provinces or of the North-West Frontier Provinces as the case may be.

"Common Gaming House" means any house, walled enclosure, room or place in which cards, dice or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of a charge for the use of instruments of gaming or of the house, the enclosure, room, or place or otherwise whatsoever.

Local Amendments.

**UNITED PROVINCES PUBLIC GAMBLING ACT I OF 1917 AND
ACT I OF 1925**

"Gaming" includes wagering or betting, except wagering or betting upon a horse-race, when such wagering or betting takes place :—

- (a) on the day on which such race is to run, and
- (b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose, but does not include a lottery :

"Instruments of gaming" includes any articles used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming ;

"Common gaming house" means :—

- (1) In the case of gaming on the digits of the sale-price of any commodity, for example opium or cotton, or on the digits of papers of bales manipulated from within jars or other receptacles, or on the occurrence of any natural event, for example, rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel or any places whatsoever in which instruments of gaming are kept or used for such gaming ;
- (2) in the case of any other form of gaming any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house,

¹¹ Ganga Prasad v. Emp., 41 P. R., 1885 Cr. „

room, tent, enclosure, space, vehicle, vessel, place or instruments, otherwise howsoever.

PUNJAB AMENDMENT ACT I OF 1929.

"Gaming" includes wagering or betting except wagering or betting upon a horse-race when such wagering or betting upon a horse race takes place—

- (a) on the day on which such race is to be run, and
- (b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose, but does not include a lottery.

"Instruments of gaming" includes any article used as a means or appurtenance of, for the purpose of carrying on or facilitating gaming, and any document used as a register or record or evidence of any gaming.

"Common gaming house" means any house or room or tent or enclosure or vehicle or vessel or any place whatsoever in which any instruments of gaming are kept or used for gaming purposes—

- (a) with a view to the profit or gain of any person owning, occupying, or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel, place or instruments or otherwise howsoever;
- (b) with or without a view to such profit or gain if the gaming for the purpose of which such instruments are so kept or used in gaming on any figures or numbers or dates to be subsequently ascertained or disclosed, or on the occurrence or non-occurrence of any natural event.

CENTRAL PROVINCES AMENDMENT ACT III OF 1927, SECTION 2.

2. (1) In Section 1 of the said Act, after the definition of "Chief Commissioner" the following definitions shall be inserted :—

"Gaming" includes wagering or betting but does not include a lottery.

Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever to wager or bet with another person shall be deemed to be "gaming".

The expression "instruments of gaming" includes any articles used as a subject or means of gaming and any document used as a register or record or evidence of any gaming.

(2) In the same section of the said Act, for the definition of "common gaming house" the following shall be substituted, namely :—

"Common gaming house" means—

(i) in the case of gaming—

- (a) on the market-price of cotton, opium or other commodity or on the digits of the number used in stating such price, or
- (b) on the amount of variation in the market-price of any such commodity or on the digits of the number used in stating the amount of such variation, or
- (c) on the market-price of any stock or share or on the digits of the number used in stating such price, or
- (d) on the occurrence or non-occurrence of rain or other natural event, or
- (e) on the quantity of rainfall or on the digits of the number used in stating such quantity, any house, room, tent, enclosure, space, vehicle, vessel or any place whatsoever in which such gaming takes place or in which instruments of gaming are kept or used for such gaming;

(ii) in the case of any other form of gaming, any house, room, tent, enclosure, space, vehicle, vessel or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instrument or otherwise howsoever.

NOTES.

(See also under Sections 3 and 4 Bombay Prevention of Gambling Act)
Scope of the Section.—This section has undergone considerable changes in the United Provinces of Agra and Oudh and the Punjab. For example the terms "Gaming" and "Instruments of gaming" which were not defined by the Imperial Act have been defined.

The United Provinces of Agra and Oudh has further defined common gaming house in a particular way to suit its own requirements.

Applicability of Local Amendments.—These Local Amendments only apply to the Provinces wherein they are enacted and have no application to other areas to which the Act applies as originally passed in 1867.

Interpretation Clause.—As a general rule of construction, words in a statute should receive their ordinary and plain meaning unless a contrary intention is apparent from the statute. The real object of the definition clause, on the other hand, is to include in the connotation of a word certain things which the legislature under certain circumstances intends to include but which may not fall within the ordinary acceptance of the term.¹²

Gaming.—The Imperial Act has not defined gaming. But gaming in its general sense means a sport of any kind, single match at a play, a solemn contest.

To game or to gamble means to use cards, dice, or other instruments according to certain rules with a view to win money or other things waged upon the issue of the contest. Contest is, therefore, an essential element as also an active participation of certain persons.

The necessary elements of gaming are :—

- (a) Contest.
- (b) Players.
- (c) Active participation.
- (d) Stakes or wagers. 13

Gaming or Gambling.—Gaming and Gambling are synonymous terms except that the latter is suggestive of a practice more reprehensible because of frequent indulgence.

To game or gamble means to use cards, dice or other instruments according to certain rules with a view to win money or other things waged upon the issue of the contest ¹⁴

Distinction between gaming, wagering and betting.—Gaming is playing at any game, sport, pastime or exercise, whether played, lawfully or unlawfully, for money or other thing which is taken on the result of the game according to the success or failure of the person who has staked. The essence of gaming is that the players take an active part in bringing about the result which is uncertain.

Wagering means the barding of money or money's worth on any contingency in which the person hazarding such money has no interest at risk other than the amount at stake.¹⁵ Wagering is making a contract on an unascertained event, past or future, by which the parties are to gain or lose, according as the uncertainty is determined one way or the other.

The difference between gaming and wagering depends not on event on which the bet is made, but on the active participation in bringing about the determining event. This active participation is present in gaming but not in wagering.

In betting there is no contest and it depends on the nature of the event on which the bet is made.

Betting and wagering both mean the same thing except that betting ordinarily applies to staking money on the result of sports.

Betting cannot be said to amount to gaming and punished as such

13. *Narottam Das Motiram v. Emp.* 13 Bom. 684.

14. *Narottam Das Motiram v. Emp.* 13 Bom. 684.

15. *Ram Partab Nemani v. Emp.* 16 I. C. 171.

because the Act applies to something which those wagering themselves bring about for the purpose of the bet. That something must be game, be played with some instrument and the play being carried out for the purpose of settling the bet. The event on which the bet is made must be a game played by those who bet before betting can be called gaming. If the event is brought about solely for the purpose of being betted about, betting on it is gaming otherwise not.¹⁶

The element of chance or uncertainty of result is common to gaming as well as to wagering or betting.

Applicability of the distinction to the Act.—The distinction between gaming, wagering and betting does not apply to United Provinces and the Punjab where the term gaming has been expressly defined to include both. The Gaming Act does not define gaming but excludes wagering or betting on some particular occasion and in particular circumstances and also excludes a lottery. This distinction cannot, therefore, be lost sight of in other provinces to which the Act applies.

Gaming when punishable.—Gaming is not an offence *per se*, but is punishable under the Act—

- (1) when it is carried on in a public place (Section 13 of the Act) and
- (2) when it is carried on in common gaming houses as defined in the Act (Sections 3 and 4 of the Act).

Gaming in a private house.—Gaming in a private house is not an offence under the Act. Gaming which is playing a game, whether of skill or chance, for the sake of pastime, is not an offence if no commission is charged by the owner or occupier thereof. It is not an offence if carried on for pleasure and not for gain, or when it is played on a religious festival, e. g., Dewali day or if the commission charged is made not as profit or gain but for the payment of those who happen to visit the house, or for remunerating those who minister to the comforts of the persons assembled or for presents or perquisites given to attendants.¹⁷

Gambling in public street or place.—This Act provides for punishment for gaming in a public street or place even when carried on without any profit or gain. The gravamen of the offence consists in the publicity of action inasmuch as an ordinary passerby cannot well avoid the temptation of joining in it.

Instruments of gaming.—The Act does not define the term nor does it define gaming as shown above.

The provincial amendments in the Punjab and United Provinces have tried to give the definition of the term but that too is not exhaustive as the use of the word "includes" implies.

16. Hari Singh v. Jadunandan Singh, 31 Cal. 542.

17. Nemi Chand v. Emp. 22 Cr.L.J. 198; Emp. v. Shanker Dayal, 71 I. C. 63:

Anything which assists gaming or which is used for the furtherance of gaming is an "instrument of gaming" and it is impossible to give an exhaustive list. Any article not primarily meant as an instrument of gaming might become so under certain circumstances when it is so used and it is not necessary that it should have been originally meant or intended to be used for gaming.¹⁸

Any implement or article devised or intended for gaming is an instrument of gaming.¹⁹

What are instruments of gaming.—As already observed no hard and fast rules can be laid down but under the circumstances of the particular cases decided by various High Courts, the following have been held to be instruments of gaming:—

Papers and advertisement and accounts are instruments of gaming.²⁰

Betting slips which is a record of betting transaction.²¹

Books for registering or recording gaming transaction and transactions in American future.²²

Ank Satta Books in which the bets are recorded is an instrument of gaming.²³

Courries used in gaming are instruments of gaming.²⁴

Coins or notes used as a means of gaming.²⁵

Dice and table used in gaming of articles such as clocks, watches, etc.²⁶

Lottery tickets—by reference to which it is to be decided whether the holder thereof wins the whole or any part of the stakes.²⁷

In United Provinces, Central Provinces and the Punjab lottery has been excluded from the definition of gaming, therefore lottery tickets cannot be called instrument of gaming in United Provinces, Central Provinces and the Punjab.

Balls of paper.—Figures from 1 to 10 written on separate pieces of paper and rolled up in balls without which gaming could not have possibly been carried on.²⁸

Metal horse.—Metal figure or horses moveable in concentric circles upon which people stake money has been held as bet.²⁹

18. *Emp. v. Po N. Yun*, L. B. R. (1893-1900), page 547.

19. *Emp. v. Sit Tun*, L. B. R. (1872-92) 155.

20. *Ismail v. Emp.*, 1927 All. 480 and *Lachchi Ram v. Emp.*, 1933 A. L. J. 1254.

21. *Ragunath Lahusa Walvekar v. Emp.* A. I. R. 1932 Bom. 610.

22. *Emp. v. Thvarmal Rupchand*, A. I. R. 1929 Bom. 151; *Atma Ram v. Emp.* 22 A. L. J. 249.

23. *Emp. v. Narottam*, 15 Bom. L. R. 1047; *Emp. v. M. L.*, 22 A. L. J. 263.

24. *Ram Charan v. Emp.*, A. I. R. 1935 Oudh 674.

25. *Piaray Lal v. Emp.*, A. I. R. 1932 Bom. 194.

26. *Emp. v. Haji Ahmad*, 4 Bom. L. R. 297.

27. 12 N. R. Cr. 34.

28. *Atma Ram v. Emp.* 22 A. L. J. 249.

29. *Hari Singh v. Jadunandan Singh*, 31 Cal 542.

Telephones over which the communications of the bets are made.³⁰

Telegrams received and used for the purposes of determining the results of bets have been held to be instrument of gaming;³¹ as to when telegrams are not instruments of gaming see.³²

Dara gaming.—Where betting slips are recovered in a house searched under a warrant under S. 5 of the P. G. Act, they constitute instruments of gaming within the meaning of the Act.³³

Any article (in Punjab and United Provinces Amendments) means any article which can be used as a subject or means of gaming.³⁴

Used—must be taken to be used in its ordinary sense.³⁵

As means—include any article that is actually used.

Instruments and means—are convertible and coextensive terms when they are taken in their general sense.³⁶

Appurtenance has been used in its ordinary sense of what appertains or belongs to something, e. g., a book used for recording bets.³⁷

For the purpose of carrying on—the words mean with the object of actually gaming.

Facilitating gaming—means affording certain means by which gaming can be carried on with ease.³⁸

Betting on the number of carts.—Under S. 1 of the Public Gambling Act as amended by the C. P. Act, III of 1927, 'gaming' includes wagering or betting and 'common gaming house' includes in the case of gaming on the occurrence of rain or other natural event any enclosure, space, etc., in which such gaming takes place. Betting on the number of cotton carts would enter the cotton market on a particular day cannot possibly come under C.I. (1) (d). The word 'natural' seems to have been deliberately used in juxtaposition to the word 'rain' in order to make it clear that a reference is intended to an event dependent on natural and not on human causes. S. 18 of the Act also cannot apply, for it provides only for the arrest of any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill.³⁹

Common gaming house—The definition given in the Imperial Act is not exhaustive but the definitions given in the United Provinces and Punjab Amendment Act are more exhaustive. The Act does not provide

30. Ram Charan v. Emp., A. I. R. 1925 Oudh 647.

31. Emp. v. Tribhuvandas, 26 Bom. 533.

32. Sri Ram v. Emp., A. I. R. 1923 All. 386.

33. Emp. v. Basant Lal, A. I. R. 1941 All. 330=1941 A. W. R. (H. C.) 220=42 Cr. L. J. 864=1941 A. L. J. 421=196 I. C. 434.

34. Emp. v. Kanji, 17 Bom. 184.

35. Emp. v. Kanji, 17 Bom. 184.

36. Emp. v. Kanji, 17 Bom. 184.

37. Emp. v. Nani Lal Mangalji, 40 Bom. 263.

38. Emp. v. Tribhuvandas, 26 Bom. 533.

39. Emp. v. Munnalal, 1939 N. L. J. 401.

any punishment for gaming inside any "vehicle" or inside any "tent" but the Local Amendments expressly mention them in their enactment.

Essentials of a common gaming house. In order that a place should be called a common gaming house it is essential that—

- (1) it must be a house, walled enclosure, etc.
- (2) instruments of gaming are kept or used therein for gaming.
- (3) profit or gain accrues to the person owning, occupying, using or keeping such house, etc, for
 - (i) the use of such instruments, or
 - (ii) the use of such house, etc., or
 - (iii) otherwise whatsoever.

Evidence for gaming under Sections 3 and 4.—In order that an accused should be convicted under Sections 3 and 4 of the Act the prosecution must prove—

- (1) that the house, etc., was a common gaming house as contemplated by the Act and
- (2) that the accused were found gaming inside such house.

Construction of the words used.—Words used in the section should be taken in their ordinary sense and must be construed in each instance with reference to the context.

Panstall.—Where a panstall is small, the area in front of it in which customers usually stand should be included in the description of "Common gaming house" when place is so used.⁴⁰

Common gaming house and private gaming house distinguished.—Gaming inside a house is an offence under the Act only when such house is kept for profit or gain of the person keeping the same and it must be shown that the owner or occupier of such house takes a fixed commission irrespective of the result of the gaming or that he manipulates the conditions in such a manner that he cannot possibly lose.⁴¹

The essential element is charge for the use of the house or the instruments of gaming and if this is wanting, the house cannot be called a common gaming house as contemplated under the Act.

In order that a place may be called a common gaming house, the instruments of gaming must be inside the place itself either kept there or brought and used there for the profit or gain and it is not sufficient that wagers are made in the place upon or by means of some article or other outside the place.⁴²

⁴⁰ *Emp. v. Gobind Prasad* 42, Cr. L. J. 32=A. I. R. 1941 Nag 16.

⁴¹ *Durga Prasad v. Emp.*, 21 A. L. J. 36.

⁴² *Emp. v. Kanji*, 17 Bom. 184.

If a house is used for the purpose of gambling by a large party of persons of different social position and standing but the owner or occupier, etc., of such house does not get any profit or gain, the house is not a common gaming house.⁴³ A house is a common gaming house if a large number of persons are invited to congregate for the purpose. It does not mean that the same persons were in the habit of resorting to the house at a place well-known to them where they can get what they want in the way of gambling.⁴⁴

Clause (i) of the definition of a common gaming house has intentionally omitted the words profit or gain and in case of satta gaming in United Provinces it is immaterial whether the owner or occupier of such house derives any gain or profit, while clause (ii) is not materially different. The house becomes a common gaming house by the mere fact that instruments of gaming are used or kept therein for such game.⁴⁵

The United Provinces Amendment of the Section.—Besides defining gaming and instruments of gaming the United Provinces Amendment Act of 1917 has brought about a change in the definition of common gaming house with a far-reaching effect.

The Punjab Amendment of the Section. It has defined gaming and instruments of gaming and has also substituted a more exhaustive definition of a common gaming house with far-reaching effect. Clause (b) of the definition is analogous to the United Provinces definition in respect of satta gaming in its clause (i); clause (a) of the Amendment is not materially different from the one in the Act.

Profit or gain.—In order to get a person convicted for keeping a common gaming house it is necessary for the prosecution under this Act to prove that he owned the house, or was the occupier of it and that the instruments of gaming were kept or used for the profit or gain of such person.

The essential element is *charge* for the use of the house or the instruments of gaming and if this is wanting the occupier or owner of such house cannot be convicted of keeping a common gaming house. The mere fact that certain articles kept by a man were used as instruments of gaming, it cannot lead to the conclusion that they were used for his profit or gain and it does not convert the house into a public house. The mere fact that gamblers set aside small sums for the remuneration of those who ministered to their comforts in the way of supplying drink or other refreshments does not show that such payments represent any advantage whatsoever to the owner or occupier of the premises. It is not necessary that the owner or occupier should derive his profits in this or any particular way. He may make profit in any way whatsoever.⁴⁶

43. *Emp. v. Han Nagji*, 7 B. H. C. Cr 74.

44. *Ramaswamy Iyer v. Emp.*, 1929 M. W. N. 267.

45. *Atma Ram, v. Emp.*, 22 A. L. J. 249.

46. *Lachchi Ram v. Emp.*, 23 A. L. J. 218.

47. *Nemichand v. Emp.*, 62 I. C. 322.

48. *Emp. v. Khyroo*, 2 N. W. P. 289.

So long as gambling is carried on the profit of the owner or occupier, it is immaterial whether he does or does not take part in the game itself and the source of profit may be of a different kind or nature from the charge for the use of the house or the instruments of gaming. The profit may be derived from the game itself. The words are wide enough to include any means or source of profit or gain. It may be proved by showing that the owner was charging for the use of the house or the instruments, or in any manner that may be possible under the circumstances of the case, having regard to the nature of game that is carried on in that house. It is not all gaming of digits which constitutes the house, vessel, etc., in which the instruments of gaming are kept, a common gaming house. If the winning number is to be ascertained, in some manner other than that mentioned in para 1 of S. 1 of the Public Gambling Act, then the place where the gaming was taking place would not be a common gaming house unless the occupier was obtaining some profit from the use of the place. In order to bring a case under the Act it is not necessary to prove that profit is certain to result. A mere expectation of profit would suffice.

Satta and similar gaming.—The local amendments in the United Provinces, Central Provinces and the Punjab have omitted profit or gain in the case of satta and similar gaming and it is only the finding of the instruments of gaming that makes it a common gaming house and the prosecution is relieved of the burden of proving the same. Satta gaming has been rendered punishable without any reference to profits or gain in these provinces. But it is incumbent on the prosecution to prove by definite evidence the commodity in respect of which the alleged Satta was going on. The vague and general statement by the prosecution witnesses that Satta gambling was going on proves nothing in law.⁵⁹

Section 2. Sections 13 and 17 of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by notification to be published in three successive numbers of the official gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station house and place being not more than three miles distant from any part of such station house within the territories subject to his Government or Administration, and in such notification to detail for the purposes of this Act, limits of such city, town or suburb or station house, and from time to time to alter the limits so defined.

49. *Abdul Sattar v. Emp.*, 27 A. L. J. 567.

50. *Emp. v. Datta Shanker Pramji*, 77 L. C. 955.

51. *Qibul Singh v. Emp.*, I. L. R. (1941) All 559=190 I. C. 252=13 R. A. 137=41 879=41 Cr. L. J. 879=1940 A. L. J. 456=1940 A. Cr. C. 96=1940 A. W. R. (H. C.) 391=A. I. R. 1940 All 412.

52. *Ismajal v. Emp.*, A. I. R. 1927, All 480.

53. *Chiranji Lal v. Emp.*, 41 Cr. L. J. 141.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended shall cease to have effect in such territories.

Local Amendments.

In United Provinces the first part of this section has been replaced by the following (United Provinces Amendment Act V of 1919) :—

“Sections 13 and 17 of this Act shall extend to the whole of the said territories (*i. e.*, United Provinces of Agra and Oudh) and it shall be competent to the Lieutenant-Governor (now Governor) whenever he may think fit, to extend by notification to be published in the official gazette all or any of the remaining sections of this Act to any area within the United Provinces.”

In Punjab—The first part of this section has been substituted by the following (Punjab Amendment Act I of 1929, Section 2) :—

“Sections 13 and 17 of this Act shall extend to the whole of the said territories and it shall be competent to the Governor in Council, whenever he may think fit, to extend by notification all or any of the remaining sections of this Act to any area within the territories administered by the Local Government.”

**CENTRAL PROVINCES AMENDMENT ACT III OF 1927,
SECTION 1 (2).**

(2) Section 3 of the Act shall come into force at once and the rest of the sections shall come into force in any city, town, suburb, railway-station house or local area to which the sections of the Public Gambling Act, 1867 (hereinafter referred to as “the said Act”), or other than Sections 13 and 17 have been extended under Section 2 of the said Act when the Local Government by notification has extended them thereto.

(3) In Section 2 of the said Act, for the words “and place being not more than three miles distant from any part of such station house” the words “or local area” shall be substituted; and for the words “or station house” the comma and words “station house or local area” shall be substituted.

NOTES.

Scope—This section provides for the automatic application of Sections 13 and 17 to the whole of the territories to which the Act has been made applicable in the preamble and for the application of any or all of the rest of the sections of the Act at the discretion of the head of the Local Government by means of notification published in three successive numbers of the official gazette.

Notification.—The Imperial Act provides for notification to be made in three successive numbers of Official Gazette but the Local Amendments require one notification and not three.

In order that a notification may be valid it must specify—

- (1) the area to which the provisions are extended,
- (2) the area which must be defined should specify the limits to which the Act is extended.
- (3) the date from which the Act is to commence.

Extension of Sections 13 and 17.—The effect of extension of sections 13 and 17 to the whole of the territories to which the Act applies is that throughout those territories gambling in any public street, place or thoroughfare is an offence.

Judicial notice of application.—A court must take judicial notice of the fact that portions of the Act have been extended to a particular locality and whether the steps taken in this respect are sufficient in law to effect it.

Section 3. Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming house; and

whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid knowingly permits the same to be opened, occupied, used or kept by any other persons as a common gaming house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with the persons frequenting such house, walled enclosure, room or place,

Shall be liable to a fine not exceeding two hundred rupees or to imprisonment of either description as defined in the Indian Penal Code for any term not exceeding three months.

Local Amendments.

UNITED PROVINCES AMENDMENT ACT I OF 1917.

Section 3 substitutes the words "house, room, tent, walled enclosure, space, vehicle, vessel or place" used in the Imperial Act in Sections 3, 4, 5, 6, and 10 wherever they occur "for the words house, walled enclosure, room or place."

THE PUNJAB AMENDMENT ACT I OF 1929.

Section 3, substitutes the words "house, room, tent, enclosure, vehicle, vessel or place" for the words "house, walled enclosure, room or place," used in the Imperial Act.

CENTRAL PROVINCES AMENDMENT ACT III OF 1927.

In Sections 3, 4, 5, 6 and 10 of the said Act for the words "house,

walled enclosure, room or place" wherever they occur the words "house, room, tent, walled enclosure, space, vehicle, vessel or place" shall be substituted.

5. In Section 8 of the said Act, for the last paragraph the following shall be substituted, namely :—

Shall be punished—

- (a) for a first offence with imprisonment which may extend to three months or with fine which may extend to five hundred rupees ;
- (b) for a second offence with imprisonment which may extend to six months and, in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than seven days, either with or without fine which may extend to one thousand rupees ; and
- (c) for a third or subsequent offence with imprisonment which may extend to six months and, in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than one month, together with fine which may extend to one thousand rupees.

NOTES.

Analogous Law.—

Bengal Act IV of 1866, Section 44.

Bengal Act II of 1867, Section 3.

Bombay Act IV of 1887, Section 4.

Burma Act I of 1899, Sections 12 and 18A.

Madras Act III of 1930, Section 8.

Analysis.—This section contemplates four classes of persons :—

- (1) The owner, occupier or one having the use of any house, etc, who opens, keeps or uses the same as a common gaming house.
- (2) The owner or occupier of any such house, etc, who knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming house.
- (3) Any person who has the care or management of or in any manner assists in conducting the business of any house, etc., as aforesaid opened, occupied, used or kept for the purpose as aforesaid.
- (4) Any person who advances or furnishes money for the purpose of gaming with persons frequenting such house, etc.

Public road if place.—It is a well known rule that any word of general indication succeeding a catalogue of words having specialized indication must be interpreted to have a meaning ejusdem generis, and the word 'place' in section 3 Public Gambling Act cannot be so construed

as to embrace the whole of the public thoroughfare. A place must be a definite area so marked out that it can be found and recognized. A public street is not such a place.¹

Effect of Local Amendments.—The Local Amendments have added something to the Imperial Act. The United Provinces Amendment has added "tent, space, vehicle and vessel" while the Punjab Amendment has added the same words and "walled" before "enclosure" in the Imperial Act.

Ingredients of the offence.—In order to support a conviction under this section it should be proved that the accused is the owner of the place alleged to be kept as a gaming house. It is not sufficient to prove that the accused used a house for gaming.² The owner of a house cannot be convicted for having permitted his house to be used as a common gaming house unless there is evidence of actual knowledge on his part that it was being so used.³

Owner.—means a right proprietor.

Occupier.—means a person who is in possession whether as owner or tenant.

Use.—is to be taken in its ordinary sense as meaning actually used.

Knowingly or wilfully permits.—imply previous knowledge and deliberate permission.

Advances and furnishes money.—imply that the person who gives the money knows beforehand that it will be used for gambling in a common gaming house. This clause aims at prohibiting the abetment of gambling in a common gaming house.

Offences whether cognisable.—In order that an offence may be cognisable it is not necessary that every police officer should have the power to arrest without warrant. As in case of an offence under S. 8 the District Superintendent of Police has such power under S. 5 the offence is a cognisable offence.⁴

Technical offence—It is not desirable to launch prosecution for a technical breach of the Act.⁵

Investigation and trial.—The ordinary provisions of the Cr. P. C. will regulate the investigation and trial of offences under this P. G. Act.⁶

Punishment.—In this section punishment of fine precedes the alternative of imprisonment which appears to be an intentional departure from the order of punishments prescribed in other penal statutes and suggests that primarily fine should be imposed and imprisonment should be awarded only in aggravated cases.⁷

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1. *Emp. v. Basanti Lal*, 169 I. C. 36=9. R. N. 294=38 Cr. L. J. 694=A. I. R. 1937 Nag. 102.
 2. *Jamna Prasad v. Emp.*, A. I. R. 1929 Oudh 151=116 I. C. 57.
 3. *Ali Din v. Emp.*, A. I. R. 1923 Rang. 141.
 4. *Nagarmal v. Emp.*, 196 I. C. 869=1941 N. L. J. 465=A. I. R. 1941 Nag. 338
 5. *Rustom Cursetji v. Emp.*, A. I. R. 1932 Bom. 181.
 6. *Nagarmal v. Emp.*, 196 I. C. 869=1941 N. L. J. 465=A. I. R. 1941 Nag. 338
 7. *Sheikh Moti v. Emp.*, 14 Cr. L. J. 293.

Imprisonment should be the last resort in crimes outside the Penal Code and as gambling hardly ranks with crimes against person and property fine is the most suitable punishment.⁸ Imprisonment may be awarded on a second conviction for keeping a common gaming house.⁹

Sentence.—Maximum sentence allowed by law under Section 3 of the Act is a fine of rupees two hundred or imprisonment of either description for any term not exceeding three months. *Imprisonment in default* therefore cannot exceed three weeks as provided under Section 65, Indian Penal Code.

Alternative punishments is provided under the section and a sentence of fine as well as of imprisonment is illegal.¹⁰

This section provides for a sentence three times that under Section 4 as an offence under S. 3 is considered to be more serious than an offence under Section 4 but a Magistrate must state in his judgment special reasons for inflicting a sentence of imprisonment.¹¹

Absence of finding that the house was a common gaming house. Where there is good evidence which has been accepted that cowries and money were seized in a house and that gambling with cowries was actually witnessed by the police before they broke in and the lower court relied on the presumption to be drawn under S. 6 of the Gambling Act, the convictions of the accused persons under Ss. 3 and 4 of the Act must stand even though it has not given any explicit finding that the house was a common gaming house.¹²

Confiscation of money.—A Magistrate is authorised to pass an order for the confiscation of money or securities for money found in a common gaming house while convicting the accused under Sections 3 and 4 of the Act as is provided under Section 8 of the Act.¹³ It is only under Sections 3 and 4 of the Act that confiscation of money is allowed and not under Section 18 of the Act.

Money found on person.—There is no provision for ordering confiscation of money found on the person of the accused and such an order is unsustainable.¹⁴

8. In re v. Babu Nagayya, A. I. R. 1931 Mad. 777.

9. Emp. v. Po Tu, L. B. R. (1872=92) page 428.

10. Emp. v. Chunni, 1881 A. W. N. 111; Mohammad Khan v. Emp., 28 P. L. R. 577 = A. I. R. 1927 Lah. 672.

11. Sheikh Moti v. Emp. 14 Cr. L. J. 293.

12. Chhabilal v. Emp. 162 I. C. 263=3 R. N. 257=37 Cr. L. J. 586=1936 Cr. C. 692= A. I. R. 1936 Nag. 138.

13. Emp. v. Kifayat, 41 All. 272

14. Emp. v. Tula, 41 All. 336; Mohadin Ali Khan v. Government of Mysore, 6 M. L. J. 583.

Enhanced punishment.—Section 15 of the Act provides for an enhanced punishment on a subsequent conviction for an offence under Section 3 and 4 of the Act.

Trial by Magistrate issuing warrant.—It is ordinarily undesirable that a Magistrate who believes that the information that a house has been used as a public gaming house is credible and issues a search warrant, should try the case. He cannot, however, be said to be personally interested in the case, and S. 526 Cr. P. C. would not apply.¹⁵

Procedure.—Trial.—The procedure applicable to a trial under this section is that of a summons case and the accused has only one opportunity of cross-examining witnesses for the prosecution.

But if the accused is tried for an offence under Sections 3 and 4 read with Section 15 of the Act the procedure to be followed is that of a warrant case trial and the accused has three opportunities of cross-examining prosecution witnesses :—

Firstly, when the witness is examined-in-chief under Section 252, Criminal Procedure Code.

Secondly, after the charge has been framed under Section 256, Criminal Procedure Code.

Thirdly, when the accused enters upon his defence under Section 257, Criminal Procedure Code.

In the first two cases the accused can as of right cross-examine them but in the third case the Magistrate has a discretion and can refuse (see Section 257, Criminal Procedure Code).

Summary trial.—Section 260 (1) (a). Criminal Procedure Code, provides for a summary trial of an offence under this section.

Joint trial.—Offences under Sections 3 and 4 are interdependent and “are the complements of one another”. A court is therefore justified in trying the two accused persons under Section 3 and 4 in the course of the same trial.¹⁶

Separate conviction.—Offences under Section 3 and 4 of the Act are distinct offences and a man may be convicted separately under each of those sections.¹⁷

Applicability of Section 562, Criminal Procedure Code.—Section 562, Criminal Procedure Code, as amended in 1923 is applicable to convictions under the Act.

Reformatory Schools Act is applicable to a conviction under the Act [see Section 4 (a) of the Reformatory Schools Act].

15. *Khemchand Girdharilal v. Emp.* 171 I. C. 1007=39 Cr. L. J. 55=A. I. R. 1938 Nag 6 3=10 R. N. 150.

16. *Darab v. Emp.* A. I. J. 1928 All. 20; *Miran Buksh v. Emp.* A. I. R. 1927 Lah. 699; *Ganesh Lal v. Emp.* 1253 1923 All. 88; *Rure Mal v. Emp.* A. I. R. 1929 All. 937.

17. *Chotey Lal v. Emp.* 81 I. C. 186=25 Cr. L. J. 698.

Relative scope of Ss. 3 and 4.—A person who is simply caught on one occasion gambling on a public road cannot be said to use the same as a common gaming house. S. 3 contemplates a more serious offence than S. 4 as the respective punishments will show, and it is evidently aimed at the keeper of a gaming house or other persons who habitually come within the same category. In the case of the public place, such as a road used as a gaming house, S. 3. would apply to a man who habitually uses that spot and has regular beat or stand there, but not to a casual gambler whether he hands over or accepts the money staked.¹⁸

Section 4. Whoever is found in any such house, walled enclosure, room, or place playing or gaming with cards, dice, counters, money or other instrument of gaming, or is found there present for the purpose of gaming whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed until the contrary is proved to have been there for the purpose of gaming.

Local Amendments.

For United Provinces read "house, room, tent, walled enclosure, space, vehicle, vessel or place" and "room, tent, enclosure vehicle vessel or place" for the words "house, walled enclosure, vehicle, room or place";

For Punjab read "house, room, tent, enclosure, vehicle, vessel, or place";

For Central Province read "house, room, tent, enclosure, space, vehicle, vessel or place" and substitute the words "two hundred rupees" for the words "one hundred rupees".

NOTES.

Analogous Law.—

Bengal Act IV of 1866, Section 5.

Bengal Act II of 1867, Section 4.

Bombay Act IV of 1887, Section 5.

Burma Act I of 1899, Section 11.

Madras Act III of 1930, Section 9.

Analysis.—This section provides for punishment under the following conditions :—

- (1) That the house is a common gaming house.
- (2) That the accused was found therein—

18. Bapulal In re, 1936 Cr. C. 549=I. L. R. 1936 Nag. 89=162 I. C. 332=8 R. N. 259 =37 Cr. L. J. 588=A. I. R. 1936 Nag. 78.

(a) playing or gaming with cards, dice, etc.

or

(b) is found there present for the purpose of gaming—

(i) whether playing for any money, wager or stake, or

(ii) otherwise.

This section contemplates punishment for the following:—

- (1) Persons found in a common gaming house gaming or playing with cards, dice, etc.
- (2) Persons found in a common gaming house for the purpose of gaming.
- (3) Persons found in a common gaming house with instruments of gaming.
- (4) Persons found in a common gaming house during any gaming or playing.

Found.—The offence under this section consists in being found in a common gaming house when a lawful search is made and an accused cannot be convicted even if he had been gambling constantly or up to the very moment of the entry by police but succeeded in effecting his escape before the police effected their entry.¹

It is sufficient if the accused at the time of the raid was seen inside the house. Arrest of the offender inside the house is not necessary; mere finding is sufficient.²

If the accused were seen on the entry of the police in the course of a lawful search, though most of them managed to evade arrest at the moment, a conviction is proper.³ The police may arrest a person when he is coming out of a gaming house.⁴

The word “found” is suggestive of raid or search but this section does not mention how a raid or search is made. Section 5 of the Act deals with the issue of warrant and the raising of a presumption upon a lawful search and should have preceded Section 3 and 4 of the Act.

Abettor and aider, if can be punished.—Only those who are actually gambling are punishable and those who aid and abet are not punishable.⁵

Any such house—means any such house, place, etc., as defined in Section 1 of the Act under common gaming house.

1. *Fazal Ahmad v. Emp.* 35 P. R. 1894 Cr.

2. *Vir Singh v. Emp.* 29 P. R. 1895.

3. *Uda Ram v. Emp.* 62 I. C. 333.

4. *Emp. v. Tribunal Moti Ram*, 53 Bom. 137.

5. *Shadi Ram v. Emp.* I. R. 1933 Lahore. 139 (1)—141 I. C. 543 (2)—34 Cr. L. J. 174—34 P. L. R. 173—1933 Cr. C. 772 (1)—A. I. R. 1933 Lah. 513 (1).

In order to prove that a house is used as a common gaming house the prosecution may either prove it—

- (i) by direct evidence of the witnesses who depose to the effect that the house was seen by them as being used as a common gaming house, or
- (ii) by falling back upon the presumption under Section 6 by showing that instruments of gaming were found inside the house or about the person of any one of those who were found there.

Persons found actually gambling guilty.—The only crime under the Act is being found in the place where gambling is going on and it is no offence to gamble in a public place as long as one is not found doing it. Persons not found in the place where gambling was going on cannot therefore be convicted under S. 4 of the Act. Prosecution should prove actual gambling by persons found at the time of search.⁶

Instruments of gaming.—See notes to Section 1.

Whether playing for any money, etc.—It is not an offence to allow people to play in a house if no commission is charged and the phrase excludes the case of innocent persons who play for the sake of fun or pleasure.

Wager is something deposited, laid or hazarded on the event of a contest.

Stake is that which is laid down to abide the issue of a contest to be gained by victory, lost by defeat or something hazarded.

Or otherwise whatsoever.—The phrase merely implies playing without any idea of winning or losing money. Mere playing without stakes in a common gaming house with instruments of gaming and being found there on search is an offence contemplated under the section.

Open space in front of panstall.—Where a panstall is very small and customers never actually enter it as there is no room for them, but they stand in front of it, and carry on the betting or gaming, the area in which the customers usually stand should be included in the definition of 'common gaming house' when the place is so used.⁷

Presumption.—The latter part of Section 4 authorises the raising of a presumption of guilt against persons found during gaming or playing

6. Gurbaksh Singh v. Emp. 177 I. C. 298=39 Cr. L. J. 856=40 P. L. R. 916=A. I. R. 1938 Lah. 631.

7. Emp. Govind Prasad 190 I. C. 764=1940 N. L. J. 297

in a common gaming house and is against the well-established and universally recognised principle of criminal jurisprudence that every man is presumed to be innocent until the contrary is proved. In criminal cases it is the duty of the prosecution to prove that the accused is the person who committed the offence and to bring home the offence against him, but the Legislature has under the provisions of Sections 4 and 6 of the Act shifted this onus from the prosecution to the accused who is presumed to be guilty unless and until he proves his innocence. The presumption authorised under the Act is purely artificial and cannot be made to operate oppressively and the genesis of the presumption is traceable not to the respectability or impartiality of the search witnesses, but to the sufficiency of the grounds on which the warrant was issued coupled with the finding of cards or other instruments of gaming in the house searched.⁸

It is the issue of a warrant upon credible information and its lawful execution and the subsequent finding of instruments of gaming which authorises such presumption of guilt. In order that a presumption may be raised against an accused it is necessary that the search under Section 5 of the Act must have been lawful and under a valid warrant. But if the search is under an illegal warrant the presumption cannot arise.⁹

The latter part of Section 4 authorises the presumption that the persons found during any gaming or playing were there for the purpose of gaming and not that such house is a common gaming house or that a particular individual is a gambler.¹⁰

Presumption of satta slips.—Where betting slips are recovered in a house searched under a warrant under S 5 they constitute instruments of gaming within the meaning of the Act and give rise to a presumption under S 6 that the house is a common gaming house.¹¹

Discovery of slips with numbers. Inference.—Where in pursuance of a warrant issued under S. 5 of the Public Gambling Act, certain slips with numbers upon them and a register are found in the house of the accused, in the absence of any explanation as to the purpose of these slips, it should be inferred that they are instruments of gaming and consequently the discovery of them is evidence, until the contrary is made to appear, that the place is being used as a common gaming house.¹²

8. *Emp. v. Kan How*, 10 I. C. 796 (L. B.); *Ganga Das Banerji v. Emp.* 51 Cr. L. J. 224.

9. *Darah v. Emp.* A. I. R. 1928 All 20; *Miran Baksh v. Emp.* A. I. R. 1927 Lah. 699, *Devi Dayal v. Emp.* A. I. R. 1929 Lah 720.

10. *Emp. v. Narotram*, 5 Bom. L. R. 1047.

11. *Emp. v. Basant Lal* A. I. R. 1941 All. 330=1941 A. W. R. (H. C.) 220=38 Cr. L. J. 864=1941 A. L. J. 421 196 I. C. 434.

12. *Qabul Singh v. Emp.* I. L. R. (1940) All. 559=190 I. C. 252=13 R. A. 187=41 Cr. L. J. 879=1940 A. L. J. 456=1940 A. Cr. C. 96=1940 A. W. R. (H. C.) 391 =A. I. R. 1940 All. 412.

Comparison of Sections 4 and 6 of the Act.—The presumption under the second part of Section 4 of the Act is similar to the presumption authorised under Section 6 but is more limited as it authorises a presumption against persons only but not against the house and that too “when” found during any gaming; while Section 6 contemplates the following presumptions:—

Firstly, that such house is a common gaming house, and

Secondly, that persons found therein were there for gaming.

It also provides for the raising of the presumption even if no play was actually seen by the search-party as is evident from the very language of Section 6. It is only the finding of instruments of gaming that authorises a presumption under Section 6.

Against persons found.—The use other word against persons found implies that the presumption can be raised against persons only and not against the house.¹³

Until the contrary is proved.—The phrase, until the contrary is proved, implies that—

(i) the presumption is subject to rebuttal and

(ii) the burden of proof is on the accused.

This appears to be based on the principle that the purpose or object of a man's presence in a common gaming house is a fact within his own knowledge and it is for him to establish it.

There is no provision as to the mode of the discharge of his onus by the subject. It may be proved by direct, presumptive or circumstantial evidence. The court can take into consideration the statement of the accused explaining the circumstances of the case or any other circumstances in his favour and record the same.¹⁴

The word “proved” does not imply that direct evidence should be produced by the accused in order to prove his innocence but mean that the burden of proving the negative fact lies on the accused.

It should be borne in mind that these words differ from the words “until the contrary is made to appear” used in Section 6 of the Act.

The point as to the difference between the two phrases does not appear to be very material and has not as yet been raised before any tribunal.

Proof of Satta Slip.—Dara gambling is a specific form of Satta gambling and in such a case the omission on the part of the prosecution to prove the commodity is not a fatal defect.¹⁵

13. Emp. v. Narottam 5 Bom. L. R. 1047.

14. Emp. v. Husain Ghulam 3 I. C. 895; Chari v. Emp. 10 I. C. 792.

15. Emp. v. Basant Lal 1941 Ail. 330=42 Cr. L. J. 864=1941 A. L. J. 421=196 I. C. 434=1941 A. W. R. (C. H.) 220.

Satta gambling-Facts incumbent on the prosecution to be proved.—

In the case of an offence under S. 8 of the Public Gambling Act, for keeping a shop as a gaming house for satta gambling, it is incumbent for the prosecution under the law to prove by definite evidence the commodity in respect of which the alleged satta gambling was going on. Mere vague and general statement by prosecution witnesses that satta gambling was going on proves nothing in law.¹⁶

Punishment.—It has already been shown in notes under section 8 that primarily fine should be imposed and imprisonment should be awarded only in aggravated cases. The punishment for fine precedes the alternative of imprisonment¹⁷

As an alternative.—Punishment under Section 4 is also in the alternative, i. e., fine or imprisonment and a sentence of fine and imprisonment is illegal¹⁸

Maximum.—The maximum sentence cannot exceed fine of one hundred rupees or imprisonment of either description for one month and the period in default of payment of fine cannot exceed one week under the provisions of Sections 65, Indian Penal Code¹⁹

Enhanced punishment.—Section 15 of the Act provides for enhanced punishment upon subsequent conviction under Section 3 and 4 of the Act.

Procedure—The offence under this Section is a summons case. The accused has only one opportunity of cross-examining prosecution witnesses.

But if enhanced punishment is desirable under Section 15 of the Act the procedure to be followed is that of a warrant case and the accused has a right to cross-examine witnesses after the charge. Provisions of Section 342, Criminal Procedure Code, must be complied with

Confiscation of money.—Section 8 of the Act provides for confiscation of money or securities for money found in a common gaming house upon conviction under Section 3 or 4²⁰ but not, under Section 13 of the Act.

There is no provision in the Act for ordering confiscation of money found on the person of the accused. Such an order is unsustainable.²¹

Application of Section 562, Criminal Procedure Code.—Section 562, Criminal Procedure Code, as amended in 1923 now applies to offences under the Act.

Summary trial—Section 260 (1) (a), Criminal Procedure Code, provides for a summary trial of an offence under this section.

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16. *Chiranj Lal v Emp.*, 1039 A. W. R. (H. C.) 736=1939 A. Cr. C. 171=1939A. L. J. 990=A. I. R. 1939 All. 734=185 I. C. 256 (2)=12 R. A. 312 (1)=41 Cr. L. J. 141.
 17. *Sh. Moti v. Emp.*, 14 Cr. L. J. 293; also see notes under "punishment" under Section 3
 18. *Mohammad Khan v. Emp.* A. I. R. 1927 Lah. 672; *Emp. v. Chunni*, 1881 A.W.N. 111.
 19. *Emp. v. Venkalla*, 2 Bom. L. R. 1081.
 20. *Emp. v. Kifayat* 41 All. 272.
 21. *Emp. v. Tulla*, 41 All. 336; *Mohadin Ali Khan v. Government of Mysore*, 6 M. L. J. 583; *Hari Har v. Emp.* A. I. R. 1928 All. 11; *Ram Pershad v. Emp.* A. I. R. 1937 Nag. 396.

Joint trial.—Offences under Section 3 or 4 are interdependent and “are the complements to one another”. A court is justified to try the two accused in the same trial.²²

Reformatory Schools Act.—If the accused is under 15 years of age he may be dealt with under the “Reformatory School Act, Sections 81”.

Separate conviction.—The two offences under Sections 3 and 4 are distinct and a man may be convicted separately under each count.²³

Section 5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place is used as a common gaming house,

he may either himself enter, or by his warrant authorise any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary any such house, walled enclosure, room or place;

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorise such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

22. *Ganeshi Lal v. Emp.* 1923 All. 88. *Darab v. Emp.* 1928 All. 20—*Muiran Bakhsh v. Emp.* 1927 Lah. 699. *Rure mal v. Emp.* 1939 All. 938.

23. *Chhotey Lal v. Emp.* 81 I. C. 186. *Rure mal v. Emp.* 1939 All. 938.

Local Amendments.

For United Provinces read "house, room, tent, walled enclosure, space, vehicle, vessel or place."

For Punjab read "house, room, tent, enclosure, vehicle, vessel or place."

For Central Provinces read "house, room, tent, enclosure, space, vehicle, vessel, or place."

NOTES.

Analogous Law.—

Bengal Act IV of 1866, Section 46.

Bengal Act II of 1867, Section 4.

Bombay Gambling Act IV of 1887, Section 5.

Burma Act I of 1899, Section II.

Madras Gambling Act III of 1930, section 9.

Analysis.—This section authorises—

A District Magistrate,

Other officer with full powers of a Magistrate or

District Superintendent of Police,

upon credible information and proper enquiry, to

(i) enter into a common gambling house him self or authorise officer of a certain rank to do so.

(ii) take into custody all persons found therein, or authorise such other officer to do so

(iii) seize all instruments, or authorise such other officer to seize

(iv) search or authorise officers to search all parts of the house, etc., and

(v) seize or allow such officer to seize and take possession of all instruments of gaming found upon such search.

Briefly stated, the section empowers these officers—

(i) to make a raid and to do all these acts,

(ii) to issue a warrant to certain officers authorising them to do these acts.

Magistrate of a District means a District Magistrate [see Section 3, clause (2), Criminal Procedure Code].

Officer invested with full powers of a Magistrate means a Magistrate of the 1st Class—see Section 3, clause (2), Criminal Procedure Code.¹

District Superintendent of Police does not include an Assistant Superintendent of Police.²

1. *Abbu Singh v. Emp.*, 10 A. L. J. 169.

2. *Nanha Lal v. Emp.*, 23 A. L. J. 137.

Legality of arrest. The fact that under S 55 of the Act the District Superintendent of Police may search without a warrant makes its a cognisable offence. The question whether the arrest was valid or not would not effect the question of the guilt or otherwise of the accused, because even if it was illegal, the Court will have jurisdiction under S. 190 Cr. P. C. to take cognisance of the offence.³

Credible information means any information which in the judgment of the officer to whom it is given, appears entitled to credit in that particular instance and which he believes to be true.⁴

A warrant for the search of a house is not invalid merely because it does not state that it was issued after the receipt of credible information.⁵

It is not necessary that it should be in writing or taken upon oath or affirmation.⁶

The body of the search warrant issued under S. 5 of the Act need not be filled up by the magistrate or his clerk. All that the magistrate has to do is to satisfy himself, that there is credible information that the accused's house is being used as a common gaming house.⁷

Credible information is not synonymous with credible evidence.⁸

It is discretionary with the court to make such inquiry as he thinks necessary, there is no obligation upon him to make any further inquiry but if he doubts the truth of the information he is bound to make an inquiry.⁹

Mode of Inquiry. The Public Gambling Act does not require the magistrate to make an inquiry before issuing a search warrant. All that the Act requires is that the magistrate should have credible information. He may, but, is not bound to make an inquiry.¹⁰

Reason to believe. The words reason to believe imply that the authority issuing the warrant is satisfied that the information is correct and sufficient to act upon.¹¹

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3. *Nagarmal v. Emp.*, 196 I.C. 869=1941 N. L. J. 465=A. I. R. 1941 Nag. 338.
 4. *Abdul Samad v. Emp.*, 1905 A. W. N. 257; *Devi Dayal v. Emp.*, A. I. R. 1929 Lah. 720.
 5. *Khem Chand Girdhari Lal v. Emp.*, 171 I. C. 1007=39 Cr. L. J. 55=A. I. R. 1938 Nag. 63.
 6. *Kadar v. Emp.*, 7 P. R. 1882 Cr.; *Devi Dayal v. Emp.*, A. I. R. 1929 Lah. 720; *Khem Chand Girdharilal v. Emp.*, 171 I. C. 1007.
 7. *Ram Prasad v. Emp.*, I. L. R. (1945) Nag. 649=1945 N. L. J. 237=A. I. R. 1945 Nag. 216.
 8. *Emp. v. Abdul Samad*, 28 All. 210.
 9. *Emp. v. Raman*, 3 Cr. L. J. 182.
 10. *Radhey Lal v. Emp.*, I. L. R. 1938 All. 422=175 I. C. 233=10 R. A. 657=1938 A. Cr. C. 17=1938 A. L. R. 389=39 Cr. L. J. 548=1938 A. L. J. 222=A. I. R. 1938 All. 252.
 11. *Basant Mal v. Emp.*, 17 P. R. 1897 Cr.; *Ahmad Hussain v. Emp.*, A. I. R. 1926 Lah. 459.

S. 5] WARRANT. PRESUMPTION OF CREDIBLE INFORMATION 39

A Magistrate ought to sift the information most carefully before taking action under this section.¹²

Presumption.—It is on the basis of this credible information and the regular performance of official acts before a search or issue of a warrant and the sufficiency of the grounds of its issue that the law has authorised a presumption of guilt against the subject or accused.¹³

If the warrant is defective and the search is not in compliance with the provisions of Section 5 of the Act or there is nothing in the record to show that the belief that the house was a common gaming house was entertained upon anything else but credible information a conviction is unsustainable.¹⁴ Nor can a presumption under the Act be drawn in case the warrant is illegal and the search is illegal.¹⁵

When any officer authorised to enter or issue a warrant takes action himself and personally enters such house he must act strictly in compliance with the provision of the Act, and, if the entry is legal and proved by evidence of such officer, thus supplying the place of warrant, the presumption will arise that the house is a common gaming house and persons found inside such house were there for the purpose of gaming.¹⁶

Nature and extent of presumption.—Where the warrant is quite legal and instruments of gaming in the form of satta slips are found in a house, it has to be presumed that the house is a gambling house, which includes the presumption that it was used for the profit of the owner or occupier.¹⁷ But the Nagpur High Court has decided that when a gambling game is being played there is a strong presumption that the persons present are taking part in it but when bets are being made at intervals and legitimate business is being carried on throughout, the presumption is not a strong one and if persons found there give a reasonable explanation for their presence it should be excepted.¹⁸

Disclosure of information.—Magistrates and police-officer cannot be compelled to disclose the name or source of the information as they enjoy a privilege under the provisions of Sections 121, 124 and 125, Indian Evidence Act, which rest upon public policy.

Warrant. Presumption of credible information.—Where a warrant issued Section 5 public Gambling Act, recites that the Magistrate is acting on information, the warrant is not illegal merely because the words "on credible information" do not appear in the warrant. The mere fact that the warrant is signed by the magistrate is sufficient to raise a presumption that the magistrate is acting on credible information.¹⁹

12. *Emp. v. Sit Nyell*, 8 I. C. 988.

13. *Ganga Dass Banerji v. Emp.*, 126 I. C. 134; *Emp. v. Kan Haw* 10 I. C. 796.

14. *Emp. v. Chiranjit*, 1891 A. W. N. 111.

15. *Hargovind v. Emp.*, 10 A. L. J. 355; *Hari Ram v. Emp.*, A. I. R. 1933 Lah, 234.

16. *Chari v. Emp.*, 10 I. C. 792.

17. *Radhey Lal v. Emp.* I. L. R. 1938 All. 422=175 I. C. 233=1938 A. Cr. C. 17=1938 A. W. R. (H. C.) 147=1938 A. L. J. 222=A. I. R. 1938 All. 252.

18. *Khem Chand Girdhanial v. Emp.*, 39 Cr. L. J. 55=10 R. N. 150=171 I. C. 1007=A. I. R. 1938 Nag. 63.

19. *Rahman Khan v. Emp.*, A. I. R. 1937 Nag. 396.

Either himself enter.—The officers authorised to enter personally are—

- (i) The District Magistrate, or
- (ii) Magistrate 1st Class or Sub Divisional Magistrate, or
- (iii) District Superintendent of Police.

By warrant authorise.—*Issue of warrant.*—Under the Criminal Procedure Code only Magistrates are authorised to issue search warrants but this section authorises a District Superintendent of Police to issue a warrant.

Section, 103, Criminal Procedure Code, provides that searches under Chapter VII, Criminal Procedure Code, shall be conducted in the presence of witnesses while Section 165, Criminal Procedure Code, applies to searches conducted by police, but this section prescribes a special procedure to be followed in searches under Section 4 of the Act and is to some extent analogous to Section 98, Criminal Procedure Code.

Provisions of Criminal Procedure Code regarding searches do not apply to searches under the Gambling Act.²⁰ Section 103, Criminal Procedure Code, has therefore no application to searches under Section 5 of the Public Gambling Act as has been held by the High Courts of Allahabad and Lahore.²¹

Endorsement to an other Police officer.—Warrants issued under Section 5 of the Act to a police officer may be endorsed by him to another police officer in accordance with the provisions of Sections 79, Cr. P. C.²²

Requirements of a legal warrant.—

- (1) *Special forms.*—The Act itself prescribes the form as it is directed to a special officer.²³
- (2) *Name of subject.*—It should contain a distinct and unequivocal intimation to the person meant to be apprehended.²⁴ And the person or individual must be indicated with sufficient certainty and particularity.²⁵ It is not on the accused to show that he is not the person meant in the warrant.²⁶
- (3) *Premises to be searched.*—It must describe the house to be searched with sufficient certainty and particularity and a warrant which does not describe it with accuracy is not legal.²⁷

20. *Emp. v. Kashi Nath*, 80 All. 60.

21. *Rure Mal v. Emp.*, A. I. R. 1929 All. 937 and *Khalinda Ram v. Emp.*, 1922 Lah. 359.

22. *Ram Prasad v. Emp.* I. L. R. 1945 Nag. 216.

23. *Banwari v. Emp.*, 11 P. R. 1895.

24. *Banwari v. Emp.*, 11 P. R. 1895 Cr.

25. *Emp. v. Shankar Dayal*, A. I. R. 1922 Oudh 280.

26. *Emp. v. Kashi Nath*, 28 A. W. N. 9; *Debi Singh v. Emp.*, 5 C. W. N. 413; *Jamna v. Emp.*, 21 A. L. J. 602.

27. *Jamna Prasad v. Emp.*, 21 A. L. J. 602.

A warrant which gives a wrong number of the house and gives no other description is not legal.⁷²

A wrong description given to the house, namely, that it was in a particular muhalla is merely a misdescription which does not vitiate the warrant.⁷³

(4) *Place of residence of subject.*—The place of residence of the subject should be indicated with certainty.⁷⁴

(5) *Name of police-officer.*—Although there is no provision for marking by name the officer who is to execute the warrant,⁷⁵ a warrant which does not contain the name of the person to which it is issued is irregular.⁷⁶

(6) *Signature of officer issuing.*—A warrant should be signed by the officer authorised to issue the same⁷⁷, and should be signed within the local limits of his jurisdiction⁷⁸.

(7) *Seal.*—A warrant should bear the seal of the officer authorised. The Punjab Chief Court has however held that an omission in this respect is a mere irregularity curable under Section 537, Criminal Procedure Code⁷⁹. But the majority of the judicial decisions has held otherwise.⁸⁰

(8) *Date.*—A warrant must bear the date on or before which it has to be executed, otherwise it would be void.⁸¹

Execution of search warrants.—There is no provision in the Act about the execution of search warrants. A police officer may endorse it to another police officer in accordance with the provisions of S. 79, Cr. P. C.⁸²

Arrest when illegal.—Even if the arrest is illegal the court has jurisdiction under S. 190, Cr. P. C. to take cognisance of the offence, and the question whether the arrest was valid or not will not affect the question whether the accused was guilty.⁸³

Effect of search.—

When warrant is legal.—As already shown a search under a legal warrant warrants the raising of the presumptions authorised under Sections 4 and 6 of the Act. An illegal warrant is no warrant for purposes of the Public Gambling Act.⁸⁴

72. *Emp. v. A. A. Husain*, A. I. R. 1926 Bom. 195.

73. *Emp. v. Jhumu*, 25 A. W. N. 105; *Raja Ram v. Emp.*, 73 I. C. 521; *Jamna Prasad v. Emp.*, 21 A. L. J. 602.

74. *Alter Kaufman v. Emp.*, 18 Bom. 636.

75. *Emp. v. Kashi Nath*, 30 All. 60.

76. *Emp. v. Shankar Dayal*, 71 I. C. 62; *Jamna Prasad v. Emp.*, 21 A. L. J. 602.

77. *Ram Swarup v. Emp.*, 1 A. L. J. 115.

78. *Girdhari Lal v. Emp.*, 23 P. R. 1910 Cr.

79. *Ibid.*

80. *Mahajan v. Emp.*, 42 Cal. 708; *Alter Kaufman v. Emp.*, 18 Bom. 636.

81. *M. M. Banerji v. Emp.*, 3 Pat. L. W. 64.

82. *Ramprasad v. Emp.*, I. L. R. 1945 Nag. 216.

83. *Nagarmal v. Emp.*, 196 I. C. 869; 41 N. L. J. 465=A.I.R. 1941 Nag. 338.

84. *Girdhari Lal v. Emp.*, 8 I. C. 137; *Emperor v. Umar Khan*, 8 I. C. 1127.

When warrant is illegal.—A search under an illegal warrant is illegal and consequently no presumption can be made in favour of the prosecution.⁸⁵

Irregularity in the form of warrant.—A mere irregularity in the form of a warrant is excusable under Section 537, Criminal Procedure Code, and *per se* cannot vitiate the proceedings based on other legal evidence.⁸⁶ Similarly a mere informality in the wording of the precept of the court does not vitiate its effect.⁸⁷

Boundaries of the house.—A warrant for the search of a house is not invalid merely because its boundaries are not specified and particularly so where it is described by the name of the owner or occupier and where there is no likelihood of anybody being in doubt as to the identity of the house to be searched.⁸⁸

Boundaries not given in warrant.—If the description in the warrant is otherwise adequate to identify the place without ambiguity it is immaterial that the boundaries are not given.⁸⁹

Search under Act—Applicability of Cr. P. Code S. 103.—S. 103 Cr. P. Code does not apply to searches under the Gambling Act. The witnesses need not be residents of the locality and need not even be respectable. They are not accomplices and their evidence does not require corroboration. No doubt the evidence of each witness must be submitted to careful scrutiny, and if the evidence as such is acceptable, there is no ground in law for disregarding it.⁹⁰

Warrant by telegram.—A court should not communicate the purport of a warrant by telegram (N. W. P. Regulations and Orders page 71).

Warrant to be tendered in evidence.—The warrant must be produced and tendered in evidence as an exhibit in the trial of persons accused of gaming.⁹¹

Search and execution of warrant.—The officers allowed to enter such house are also authorised to—

- (i) have such assistance as is necessary,
- (ii) use force (for entry) if necessary.
- (iii) take into custody persons found therein,
- (iv) seize all instruments of gaming, moneys, etc. found therein,

85. *Miran Bukhsh v. Emperor*, 104 I. C. 441 : A. I. R. 1927 Lah. 690.

86. *Emperor v. Man Singh*, 1881 A. W. N. 202; *Emperor v. Musa*, 1884 A. W. N. 59.

87. *Nanhe Lal v. Emperor*, 86 I. C. 832.

88. *Radhey Lal v. Emp.* I. L. R. 1938 All. 422 = 175 I. C. 233 = 1930 A. Cr. C. 17 = 1938 A. I. R. 389 = 30 Cr. L. J. 548 = 1938 A. L. J. 222 = A. I. R. 1938 All. 252.

89. *Emperor v. Govind Prasad* 42 Cr. L. J. 32; A. I. R. 1941 Nag. 16.

90. *Ram Prasad v. Emperor*, 169 I. C. 42 = 38 Cr. L. J. 702 = A. I. R. 1937 Nag. 251.

91. *Emperor versus Subsook*, 2 N. W. P. 476)r

- (v) search all parts of the house, etc. and
- (vi) search the persons of those who are taken into custody.

A warrant should be executed without delay otherwise the worth of the incriminating presumption is reduced.⁹²

Officers executing the warrants should see that it is duly obeyed.⁹³

Officer entitled to execute the warrant.—The Act lays down that “any officer of police not below such rank as the Lieutenant-Governor (now Governor) or Chief Commissioner shall appoint in this behalf” in the different provinces.

Officers authorised in the United Provinces.—Inspectors of Police and all officers in charge of police-stations not below the rank of a sub-inspector may be authorised to take action under Section 5 of the Public Gambling Act III of 1867 (see United Provinces Gazette of the 25th June 1910, Part I, page 598 and Notification No. 2195/VI=849—1909, dated 14th June 1910).

Officers authorised in the Punjab.—Inspectors of Police and all officers in charge of police-stations not below the rank of sub-inspector may be authorized to take action under Section 5 of the Public Gambling Act III of 1867 (see Notification No. 2195/VI-849—1909 of the 14th June 1910 in the Punjab Gazette, Gazette, dated 25th June 1910, Part I, page 598).

Officers authorised in the Central Provinces.—No police-officer below the rank of a sub-inspector or authorised under Section 5 of the Public Gambling Act III of 1867 is competent to take action under the Act (see Notification No. 62, dated 5th February 1907, Central Provinces Gazette, Part I, page 68).

Endorsement of warrant.—Although the Act authorises officers to execute the warrant but search warrants issued under the Act are governed by the provisions of the Criminal Procedure Code relating to issue of warrants and consequently a warrant may be endorsed by a police-officer, to whom it was originally issued, to another who is not below the rank authorised under the Act. The Magistrate is not bound to name any particular officer to execute it.⁹⁴

The Punjab Chief Court has held the contrary view that the officer named in warrant cannot authorise anyone else to make that search.⁹⁵ A warrant addressed to more than one officer of police or in an alternative to more than one police-officer is not a bad warrant.⁹⁶

Seize all money.—In addition to the instruments of gaming this section authorises the seizure of all moneys and securities for money and articles of value that are—

92. *Emperor v. Allo Miya*, 5 Bom. L. R. 805.

93. *Alter Kaufman v. Government of Bombay*, 18 Bom. 636.

94. *Empro v. Kashi Nath*, 5 A. L. J. 59=30 All. 60; *Mahadev. v. Emp.*, A.I.R. 1934 Oudh 90.

95. *Vir Singh v. Emperor*, 22 P. R. 1895 Cr.

96. *Basant Maj v. Emperor*, 17 P. R. 1897 Cr.

(i) reasonably suspected to have been used or intended to be used for gaming and

(ii) are found therein.

Money found on person.—There is no¹ presumption that all the money found on a gambler in a gaming house is intended to be used for gaming. The Act therefore does not authorise the seizure of money found on the person of anybody present except for the purpose of use as evidence in the case.⁹⁷ This section authorises the seizing and forfeiting of money found on the table or on the floor or other place in the house and not on the person of the men arrested.⁹⁸

S. 6. When any cards, dice, gaming tables, cloths, boards or other instruments of gaming are found in any house, walled enclosure, room or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police-officer, or any of his assistants.

Local Amendments.

For United Provinces read “house, room, tent, walled enclosure, space, vessel or place.”

For Central Provinces “house, room, tent, enclosure, space, vehicle, vessel or place.”

For Punjab read “house, room, tent, enclosure, vehicle, vessel or place.”

NOTES.

Analogous Law.—

Bengal Act IV of 1866, Section 47.

Bengal Act II of 1867, Section 6.

Bombay Act IV of 1887, Section 7.

Burma Act I of 1899, Section 7.

Madras Act III of 1980, Section 6.

97. *Emperor v. Piarey Lal*, 121 I. C. 657; *Chaturbhuj v. Emperor*, A. I. R. 1923 Nag. 66.

98. *Miri Lal v. Emp.*, 8 Lah. 320=A. I. R. 1927 Lah. 338; *Emp. v. Ballu Singh*, 938 A. L. J. 132.

Analysis.—This section contemplates two presumptions :—

- (1) that the house is used as a common gaming house and
- (2) that the persons found therein were present for the purpose of gambling.

Conditions raising the presumption.—In order that the presumption contemplated under the section may be raised it is necessary—

- (1) that the house, etc., is entered or searched under the provisions of Section 5 of the Act, and
- (2) that cards, dice, etc., are found—
 - (i) in the house, etc., or
 - (ii) about the person of any person found therein.

Actual gaming is not necessary.—This section authorises the presumption in case the above-mentioned conditions are fulfilled. It is immaterial whether gaming was or was not actually going on at the time when the house is entered or searched as the phrase “although no play was actually seen by the Magistrate or Police-officer, or any of his assistants” implies and it is not necessary to prove the use of the instruments of gaming. Such use can be inferred from facts and circumstances established by the prosecution.¹

May presume.—The Court may presume that the officer issuing the warrant has acted on credible information, and it would follow that the presumption arising under S. 6 would arise if, as a result of the ensuing search, the articles indicated in S. 6 are found.²

Presumption when arises.—Before the prosecution can rely on the presumption under S. 6 it is absolutely necessary for them to show that the place where the accused is found gambling really is the place named in the search warrant.³ It is desirable that warrants issued under S. 5 should employ the language of the section itself. It is only if there is proper compliance with the terms of S. 5 that the presumption under S. 6 will arise. In the absence of proof by specific evidence that a house was used for the profit or gain of the person owning or occupying it, the presumption under S. 6 does not arise.⁴ Slips of papers with numbers upon them are commonly used for the purpose of betting or wagering and are instruments of gaming and their discovery is evidence which the Magistrate is entitled to consider as proving that the place where they were found was a common gaming house or, in other words, that the other requisites of a common gaming house were established.⁵

1. *Emp. v. Narottam*, 5 Bom. L. R. 1047.

2. *Emp. v. Mohammad Yusuf*, I. L. R. 1945 Lah. 119 (F. B.).

3. *Bajnath v. Emp.*, 169 I. C. 303=9 R. C. 914 (1)=38 Cr. L. J. 784=A. I. R. 1937 Cal. 54.

4. *Thambi Iyengar, In re* 1945 M. W. N. 771=(1945) 2 M. L. J. 37,

5. *Qabul Singh v. Emp.*, 41 Cr. L. J. 879.

Finding of playing cards—denial of gambling.—Where packets of playing cards are found in a shop on a search being made under S. 6, Public Gambling Act, unless other circumstances of the case indicate that in fact unlawful gaming was going on in such shop, the mere denial of the house owner is often sufficient and indeed the only available proof that unlawful gaming was not going on in such shop.⁶

Nature of presumption—The section authorises a presumption of guilt against the subject or accused and is a departure from the ordinary rule of law and the universally accepted principle of criminal jurisprudence that an accused person is presumed to be innocent until the contrary is proved. Ordinarily, it is the duty of the prosecution to bring home the offence to the accused and prove beyond reasonable doubt that the accused committed the offence; but under the Public Gambling Act the burden of proof is shifted from the prosecution to the accused who has to establish his innocence. Therefore it is proper that this section should be very strictly construed.

The idea of the presumption is traceable not to the respectability or impartiality of the witnesses for the search but to the sufficiency of the grounds on which the warrant of search was issued coupled with the finding of cards or other instruments of gaming in the place searched.⁷

The presumption arises from the search executed under a valid warrant and the finding of instruments of gaming inside the premises searched or on the person of those found therein. The prosecution may prove by producing evidence that the house was a common gaming house.

May refuse to presume.—The trying Magistrate may, however, refuse to draw the presumption under S. 114 (e) of the Evidence Act, even when the warrant is in proper form, on good cause being shown.⁸

Presumption is rebuttable.—The accused is entitled to rebut the presumption and to adduce evidence in support of his innocence.⁹

The use of the phrase "until the contrary is made to appear" in this section and the phrase "until the contrary is proved" in Section 4 of the Act implies that—

- (i) the presumption under the Act is one that can be rebutted and
- (ii) that the onus of proving the contrary lies on the accused.

This rule of law is based on the fact that the purpose or object of a man's presence at a particular place is a fact within his knowledge and it is therefore for him to prove it.

Presumption if can be raised when warrant is illegal—Where there was no credible information and no inquiry was made for the purpose of being satisfied that a house was used as a common

6. Maung Shen v. Emp. A. I. R. 1937 Rang. 469.

7. Emp. v. Kan How. 10 I. C. 766.

8. Emp. v. Mohammad Yusuf, I. L. R. 1915 Lah. 119 (F. B.)

9. Khem Chand Girdhari Lal v. Emp., 171 I. C. 107; Chimman Lal v. Emp., 41 I. C. 997.

gaming house and a warrant is issued by the Magistrate, it could not be a legal warrant and hence S. 6 of the Public Gambling Act could not be invoked to raise a presumption against the accused in such a case.¹⁰

This presumption is rebuttable, and it is open to the magistrate to hold, after hearing all the evidence, including such evidence as the accused may wish to lead, that the mere issue and service of a warrant in a particular case is not sufficient to give rise to the presumption that the house searched is a common gaming house merely because cards and other instruments of gaming happen to be found therein.¹¹

Made to appear.—The onus may be discharged in several ways. The law does not prescribe any particular method in which the onus is to be discharged. It may be discharged—

- (i) by producing evidence in defence to the effect that the house is not a common gaming house; ¹²
- (ii) by the circumstances appearing from the record of the case; ¹³
- (iii) by proof of the fact that no commission was charged by the owner or occupier of the house for the use of the house or instruments of gaming or otherwise.¹⁴

Onus of proof.—If the court chooses to draw a presumption under S 114 (e) regarding the credibility of the information, the mere production of a warrant might be sufficient to prove the credibility of the information and it is not incumbent on the prosecution to place before the court the nature of the information received. But if the prosecution depends in any particular case on the mere production of the warrant, it would do so at its own risk, because the court may refuse to draw the presumption in which case the probability is that the prosecution would fail. If the prosecution does not choose to depend on the mere production of the warrant, the best evidence to prove the credibility of the information would be the evidence of the officer to whom the alleged credible information had been given. In most cases the officer concerned would be the Sub-Inspector of Police and his evidence would be sufficient to meet the requirements of the law.¹⁵

Play not actually seen.—It is immaterial whether any gaming or playing was actually going on or not at the time of the raid, it is the fact of the discovery of the instruments of gaming which authorises the presumption.

Presumption under Section 6 is more comprehensive than the one authorised under Section 4 of the Act, as under the latter even a spectator is presumed to have been there for the purpose of gaming if he is found therein during any gaming or playing.¹⁶

10. *Emp. v. Parlihad*—1939 N. L. J. 357.

11. *Emp. v. Mohammed Yunus* I.L.R. 1945 Lah. 119 (F.B.)

12. *Emp. v. Ghulam Hussain*, 3 I. C. 895.

13. *Lachman v. Emp.*, 128 I. C. 65—A. I.R. 1930 Oudh 403.

14. *Emp. v. Ghulam Husain*, 3 I.C. 895; *Khem Chand Girdhari Lal v. Emp.* 171 I.C. 1007.

15. *Emp. v. Mohd. Yusuf* I.L.R. (1945) Lah. 119 (F.B.)

16. *Emp. v. Narottam*, 5 Bom. L.R. 1047.

Section 7. If any person found in any common gaming house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name and address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

NOTES.

Analogous Law.—Bengal Act II of 1867, Section 7.

Analysis.—The section provides for an additional punishment by prescribing a penalty for a person—

- (1) who refuses or neglects to give name and address or
- (2) who gives a false name and address;
when required to do so—
 - (i) by the police officer at the time of arrest in a common gaming house, or
 - (ii) by a Magistrate before whom he is produced after arrest.

But the penalty can be imposed only after conviction under the provisions of Section 3 or 4 of the Act and not when he is convicted under Section 13 of the Act. If the trial ends in an acquittal action under this section is illegal.

Punishment.—This section authorises a court to adjudge the accused to pay a penalty not exceeding five hundred rupees together with the accused as he thinks reasonable.

Non-payment of the penalty and costs.—In default of payment of such penalty and costs the accused may be imprisoned for any period not exceeding one month.

Or in the first instance.—The words “or in the first instance” imply that imprisonment may be awarded either as substantive punishment or in default of penalty and costs. It cannot be awarded in addition to the penalty and costs.

Optional.—The power conferred under this section is optional and a Magistrate is not bound to proceed under this section even in case of conviction, as the use of word “may” clearly indicates.

Section 8. On conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

NOTES.

Analogous Law.—

Bengal Act II of 1867, Section 8.

Bombay Act IV of 1897, Section 8.

Burma Act I of 1899, Section 15.

Madras Act III of 1930, Section 10.

Analysis.—This section provides that when a court convicts any person under Section 3 or 4 of the Act, he may also order—

- (i) that all the instruments of gaming found therein be destroyed,
- (ii) that all or any of the securities for money and other articles seized be sold and converted into money,
- (iii) that the proceeds thereof be forfeited,
- (iv) that all moneys seized therein be forfeited,
- (v) that any part of such money or sale-proceeds be returned to any person appearing to have been entitled thereto.

On conviction.—The words clearly indicate that action under this section can only be taken when there is a conviction and not when there is no conviction.

For keeping a gaming house or being present therein.—These words clearly indicate that this section contemplates conviction under Section 3 and 4 of the Act and is not applicable to a conviction under Section 13 of the Act.

Confiscation of money.—S. 8 of the Act lays down clearly that all money found in a gaming house may be confiscated and hence in such cases there can be no question whether that money is an instrument of gaming or not.¹

Confiscation of money found on person.—A magistrate has no power on a conviction to order confiscation of the money found on the

1. *Radhey Lal v. Emp.* 1 L. R. 1238 All 422=175 I. C. 233=1938 A. Cr. C 17=1938 A. L. R. 389=39 Cr. L. J. 54=1938 A. L. J. 222=A. I. R. 1938 All. 252.

person of the accused. Such an order is clearly in the teeth of the provisions of S. 13 and is illegal.² The money seized under S. 5 and forfeited under S. 8 of the Public Gambling Act is the money seized as found on the premises and connected with gaming by suspicion, and not the money found in the pockets of those taken into custody. It follows therefore that a ring seized in personal search cannot be forfeited.³

Confiscation of money found on *Phar*.—S. 13 does not justify the seizure of money. Money is not an instrument of gaming within the meaning of that section. The magistrate has therefore no authority under the Act to confiscate this money. But he has this authority under the provisions of S. 517, Cr. P. C. where it has been produced before the Court.⁴

Money found on person.—S. 5 of the Public Gambling Act conveys no authority for the seizure and confiscation of money found on the person of people found in a common gaming house. The authority extends only to money found therein reasonably suspected to have been used or intended to be used for the purposes of gaming. To put the matter shortly, there can be no justification for assuming that any person who frequents a public gaming house has the intention of gaming with all the money he happens to have in his pocket at the time.⁵

Money seized therein.—

The proceeds thereof.—This section provides for the forfeiture of the sale-proceeds of the articles or securities and for money found inside a common gaming house and not the articles or the securities themselves.⁶

Money seized therein.—These words clearly indicate that the court is empowered to forfeit only the money seized in a common gaming house on an entry under the provisions of Section 5 of the Act, and not money found on the persons of those arrested therein.⁷

The private property of an individual such as money or jewellery on his person when found in a gaming house cannot be seized and forfeited under the section unless it is quite clear that there was attached to such private property the taint that it was reasonably suspected to have been used or intended for the purpose of gaming.⁸

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2. *Harihar v. Emperor* 172 I. C. 793=1938 A. L. R. 40=38 Cr. L. J. 227=1937 A. L. J. 973=A. I. R. 1938 All. 11. See also *Emperor v. Budhilal* 1939 N. L. J. 403.
 3. *Emperor v. Chindhya Warla*, I. L. R. (1943) Nag. 667=210 I. C. 123=16 R. N. 144=45 Cr. L. J. 93=A. I. R. 1943 Nag. 386=1943 N. L. J. 430.
 4. *Ballu Singh v. Emp.* 174 I. C. 556=1938 A. Cr. C. 10=1938 A. L. R. 229=39 Cr. L. J. 441=1938 A. L. J. 102=A. I. R. 1938 All. 209.
 5. *Ram Parsad v. Emperor*, 169 I. C. 41=9 R. N. 296=38 Cr. L. J. 702=A. I. R. 1937 Nag. 251.
 6. *Emp. v. Kifayat*, 43 I. C. 165; *Lachmi Narain v. Emp.*, A. I. R. 1924 Pat. 42.
 7. *Emp. v. Walla Musaji*, 26 Bom. 641.
 8. *Lachmi Narain Marwari v. Emperor*, A. I. R. 1924, Pat. 42=*Emperor v. Tulla*, 17 A. L. J. 368=*Emperor v. Toti*, 26 All. 27=*Ram Sukhi Ram v. Emperor*, 19 A. L. J. 765.

Petromax lamps in the house.—Under S. 8 of the Public Gambling Act, it is only the instruments of gaming that could be dealt with by the Magistrate, Petromax lamps found in the house searched could not be so dealt with as they are not instruments of gaming.⁹

S. 9. It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

NOTES.

Analogous Law.—

Bengal Act II of 1867, Section 9.

Bombay Act IV of 1887, Section 9.

Madras Act III of 1930, Section 7.

This section relieves the prosecution of the burden of proving that the persons who were found in the common gaming house were playing for any money, wager, or stake only in case of persons tried for keeping a common gaming house or of being concerned in the management of any common gaming house. Hence it is clear that if the prosecution seek conviction of persons found inside the house for gambling it shall have to discharge its onus of proving that they were found therein gaming or playing for wager or stake.

United Provinces Amendment Act.—The provisions of this section relieve the prosecution of the burden only in case of owners or managers of common gaming house, but not in case of persons found therein. Under Section 2 (1) of the United Provinces Amendment Act I of 1925 any house in which satta wagering is carried on in a common gaming house whether any profit on gaming accrued to the owner or occupier or not, what is essential is that instruments of gaming are kept or used for such gaming. Consequently under that section the prosecution is relieved of this burden even in case of persons found inside such satta gaming house.

S. 10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure,

9. *Empéror v. Pralhad*, 1039 N. L. J. 357.

room or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person, so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in Section 178 or Section 179 (as the case may be) of the Indian Penal Code.

Local Amendments.

For United Provinces read "house, room, tents walled enclosure, space, vehicle, vessel or place," for the words "house, walled enclosure, room or place."

For Punjab read "house, room, tent, enclosure, vehicle, vessel or place."

For Central Provinces read "house, room, tent, enclosure, space, vehicle, vessel or place."

NOTES.

Analogous Law—

Bombay Act IV of 1868, Section 10.

Burma Act I of 1899, Section 8.

Analysis.—This section authorises a Magistrate, while trying a case under Section 3 or 4 of the Act, to examine on oath or solemn affirmation as witnesses persons arrested in a common gambling house and brought before him for trial. Such persons are required to give evidence—

- (i) touching any unlawful gaming in such house or
- (ii) touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, etc., of any Magistrate or officer properly authorised,

Object.—The object of this section is to use the evidence of accused on oath against others as it is sometimes difficult for the prosecution to prove as to who is the real owner or keeper of a common gaming house because of the ways it is used by such persons.

This section authorises a Magistrate to require any person found in a common gaming house and brought before him to give evidence while Section 11 of the Act authorises the Magistrate to give such accused a certificate of indemnity from prosecution for such gaming, provided that in the opinion of such Magistrate he has made a true and faithful discovery of the facts of such gaming. Sections 10 and 11 are therefore interdependent and should be read together.

Nature of the provision.—A perusal of Sections 10 and 11 makes it clear that the whole procedure of the Act is a special one and overrides the general law as to the procedure connected with pardons and examinations of the accused as laid down in the Criminal Procedure Code.

Section 348 of the Criminal Procedure Code provides that "no influence by means of any promise or otherwise shall be used to an accused to induce him to disclose or withhold any matter within his knowledge," while under the provisions of this section a Magistrate can require him to make a statement favourable to the prosecution in the hope of getting a pardon under Section 11 of the Act.¹

Who can give evidence.—A court under this section can only examine a person—

- (i) when he is apprehended along with others and
- (ii) when the search under the Act is in strict compliance with the provisions of Section 5 of the Act and
- (iii) when he is placed on trial before a Magistrate along with others.

Under the provisions of this Act.—If the warrant is illegal or the search is not in accordance with the provisions of this Act the Magistrate cannot convert the accused into a witness and it is illegal to examine him under this section.²

To be examined on oath or affirmation—This section overrides the provision of Section 342 of the Criminal Procedure Code which provides that "no oath shall be administered to the accused" and authorises a Magistrate to require the accused to take oath and a refusal entails punishments under Section 178 or Section 179 of the Indian Penal Code.

Exemption from examination—This clause is an embodiment of the principle of Section 132 of the Indian Evidence Act and such person is treated as a witness for answering questions, answers to which

1. *Liladhar v. Emperor*, 29 I. C. 79.

2. *Kalu Ram v. Emperor*, 12 A. L. J. 691; *Nanhe Lal v. Emperor*, 23 A.L.J. 137.

may tend directly or indirectly to incriminate him or expose him to a penalty or forfeiture of any kind.

Tender of pardon.—Under the provision of the Criminal Procedure Code an approver is granted pardon and examined afterwards as a witness while under this section he is first examined as a witness and if the Magistrate is satisfied about the truth of the statement it is then that he receives a pardon.

Thus both under this Act and the Criminal Procedure Code he is under an inducement to make a statement favourable to the prosecution and is liable to punishment if he does not make a true and faithful disclosure.

Where the warrant was not a legal one, it would not be open to the Magistrate to examine one of the gamblers arrested at the time of the search. He could no doubt examine them though they are accomplices and their evidence would be admissible by virtue of S. 10 of the Act only, if the search was made in accordance with law.³

Trial and conviction of approver.—The scheme of the Public Gambling Act is that a person may be taken from the dock and placed in the witness-box and returned to the dock and punished if he fails to satisfy the court that he is entitled to an indemnity. The procedure is not governed by the Criminal Procedure Code and no separate trial is necessary for his conviction. There is no provision in Section 10 of the Public Gambling Act against the conviction of an approver who does not depose truthfully. Under Section 11 a Magistrate may, if he so chooses, indemnify an approving accused, if such accused witness, in the Magistrate's opinion, has to the best of his knowledge made a true statement; it follows that if the Magistrate considers that the witness has not made a truthful statement to the best of his ability, he is not to be indemnified. He is an accused person and punishment necessarily follows.⁴

Value of evidence.—The evidence under S. 10 is in the nature of the evidence of an accomplice and should be received with caution as the person making the statement is under an inducement to make a statement favourable to the prosecution in order to secure a certificate of indemnity for himself.

A person examined as a witness under this section is not an approver in the technical sense within the meaning of an approver under the Criminal Procedure Code.⁵

Section 114 (b) of the Indian Evidence Act lays down that the evidence of an accomplice is unworthy of credit unless corroborated in material particulars and as the provisions of the Evidence Act apply to all judicial proceedings and there being no provision in the Gambling Act to exclude the application of the Evidence Act to proceedings under it, it is proper that the evidence of such a person should be rejected unless it is corroborated in material particulars.⁶

3. *Emperor v. Pralhad*, 1939, N. L. J. 357.

4. *Rahman Khan Apal Khan v. Emperor*, A. I. R. 1937 Nag. 396.

5. *Bhaggi Lal v. Emperor*, 42 All. 470.

6. *Barkat Ali v. Emperor*, 2 P. R. 1917=36 I. C. 161.

The Act does not invest the testimony of such a witness with any special value beyond that which ordinarily attaches to the evidence of an accomplice,⁷ and must be received with caution.⁸

Admissibility of evidence.—Under this section an accused can be examined on oath only if the search was conducted in strict compliance of the provisions of Section 5 of the Act,⁹ but if the warrant is illegal or does not comply with the provisions of Section 5 of the Act, evidence of the person examined under Section 10 of the Act is inadmissible in evidence.¹⁰

If the house is not searched under the provisions of Section 5 of the Act but contrary to these provisions the police on entering the house become trespassers and none of the accused arrested can be examined as a witness under this section.¹¹

Use against the witness himself.—There is no provision in this section as to the use and admissibility of the statement against the witness himself in case the Magistrate does not believe it to be a faithful disclosure and does not grant the certificate, although under Section 339 (2), Criminal Procedure Code, the statement made by a person accepting a tender of pardon, may be given in evidence against him at his trial for the offence in respect of which the court granted him pardon.

Refusal to give evidence.—This section empowers a Magistrate to make such person take the oath or affirmation and give evidence even though he is not so willing and further provides that a refusal to take the oath or affirmation or to answer any such question is liable to be punished under Section 178 or 179, Indian Penal Code.

Require any such persons.—The use of the word "persons" in the section implies that the examination is not limited to one of the accused persons on trial. It is lawful for the Magistrate to examine any or all of them.¹²

Liability to prosecution.—A person examined under Section 10 remains liable to prosecution till he satisfies the Magistrate that he has made a true and full discovery. It is usually the evidence of an accomplice and is given under certain inducement to make a statement favourable to the prosecution. These considerations bear upon the weight to be attached but have nothing to do with its admissibility.¹³

7. *Emperor v. Nga Ya Po*, U. B. R. (1897-1901), Vol. I, page 224.

8. *Mahadeo v. Emperor*, 18 A. L. J. 383; *Kalu Ram v. Emperor*, 19 A. L. J. 691.

9. *Ram Surup v. Emperor*, 1 A. L. J. 115.

10. *Bhirgu v. Emperor*, 1934 A. C. C. 85.

11. *Bhaggi Lal v. Emperor*, 42 All. 40; *Mahadeo v. Emperor*, 18 A. L. J. 383.

12. *Mahadeo v. Emperor*, 18 A. L. J. 383.

13. *Ibid.*

S. 11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecution under this Act for anything done before that time in respect of such gaming.

S. 12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

Local Amendments.

United Provinces.—This section has been in a way replaced by Section 5 of the United Provinces Public Gambling (Amendment) Act I of 1917 in the following words :—

“Nothing in this Act shall apply to any game of mere skill wherever played.”

Punjab.—This section has been replaced by Punjab (Amendment) Act I of 1929, Section 9, in the following words :—

13. Nothing in this Act shall apply to any game of mere skill wherever played.”

NOTES.

Analogous Law.—

Bengal Act II of 1867, Section 10.

Bombay Act IV of 1887, Section 13.

Burma Act I of 1290, Section 4.

Madras Act III of 1930, Section 11.

Object.—This section aims at exclusion of games of pure skill from the operation of the Act.

Repeal.—This section is not applicable to the United Provinces and the Punjab, having been repealed by—

(i) Section 4 of the United Provinces Public Gambling (Amendment) Act I of 1917.

(ii) Section 5 of the Punjab (Amendment) Act I of 1929.

Foregoing provisions.—This section is restricted in its application to games played in a common gaming house, as the use of the words "Nothing in the foregoing sections" implies that this section is applicable only to Sections 1 to 11 of the Act and not to sections following Section 12.

Section 18 of the Act itself excludes from its operation games of mere skill as the use of the words "Not being a game of mere skill" implies.

Scope of local amendments.—The local amendments of the United Provinces and the Punjab Acts (Section 15A and Section 18 of the Act) apply to all the provisions of the Act.

In view of the United Provinces and the Punjab amendments the use of the words "not being a game of mere skill" in Section 18 of the Act appears to be superfluous.

Game of mere skill.—Section 10 read together with Section 18 of the Act and the local amendments of the United Provinces and the Punjab exclude the operation of the Act to games of skill.

There can be no hard and fast rule laid down as to what is a game of mere skill, it should be determined with reference to the various circumstances of each case which is to be decided on its own merit.

A game of pure skill is a game in which the element of chance is so subordinated to the element of skill that it looks like a game of skill. Where the chief element of a game is skill the game is not an offence, although there is an element of chance also in it.¹

It is not the presence of the element of chance but the predominance thereof which makes it a game of chance.²

It is essential for an offence under the Act that the game should be one in which the loss might be due not to a lack of skill but lack of luck.³

It is a question of the application of the Act involving risk to lawful recreation by the public and unless the Magistrate has committed any grave error in arriving at the finding the High Court will not interfere⁴.

Ring game is not a game of mere skill and is not therefore exempt under the Act⁵ But a contrary view has been taken by the Lahore High Court in a comparatively rent case.⁶

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1. *Hari Singh v. Emperor*, 6 Cr. L. J. 412; *Ahmed Khan v. Emperor*, 8 A.L.J. 1262.
 2. *Ahmed Khan v. Emperor*, 8 A.L.J. 1262.
 3. *Tilok Chand v. Emperor*, 89 I.C. 396.
 4. *Damri Mian v. Emperor*, 61 I. C. 518.
 5. *Ahmed Khan v. Emperor*, 8 A.L.J. 1262.
 6. *Abdul Qasim Jan v. Emp.* 158 I. C. 65=1935 Lah. 225=36 Cr. L. J. 1258.

S. 13. A police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid,

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

and such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Local Amendments.

In United Province.—For the words “playing for money or other valuable thing with cards, counters or other instruments of gaming used in playing any game not being a game of mere skill” substitute the word “gaming” (United Provinces Amendment Act I of 1917, Section 5).

For Punjab read the same amendment as for United Provinces (Punjab Amendment Act I of 1929, Section 6).

NOTES.

Analogous Law.—

Bengal Act II of 1867, Section 11.

Bombay Act IV of 1887, Section 12.

Burma Act I of 1899, Sections 5 and 10.

Msdras Act III of 1930, Section 2.

Analysis.—This section provides for the arrest and punishment of persons found in any public street, place or thoroughfare who are—

- (i) playing for money or other valuable thing with cards, dice, etc, or
- (ii) setting birds or animals to fight, or
- (iii) there present aiding and abetting such public fighting of birds and animals.

It further provides for—

- (i) the punishment of the offender with fine not exceeding fifty rupees, or imprisonment of either description for any term not exceeding one month, and
- (ii) the seizure of all instruments of gaming found in—
 - (a) such public place, or
 - (b) on the person of those who are arrested there, and
- (iii) the destruction of all the instruments of gaming, by the order of the Magistrate, upon the conviction of the offender.

Object.—This section aims at punishing gaming in public places. The gravity of the offence consists in its publicity setting a bad example and its accessibility to the public as an ordinary passerby cannot well avoid seeing it and is likely to be enticed to join in or follow the bad example openly placed in his way.¹

Profit or gain.—Under Section 18 the offence is not that individual members are making any profits, or any gain accrues to the person who assists in or makes arrangements for gaming, but simply that gaming is carried on with publicity.

The question of profit or gain is therefore immaterial for an offence under this section unlike the provisions of Sections 3 and 4 where it is the chief ingredient and persons playing or gaming in a private house are immune from arrest or punishment if there is no profit or gain to the owner or occupier of the house.

A police officer.—Every police-officer, is irrespective of rank, authorised under this section to arrest persons found gaming in public places.

May apprehend.—A police-officer is not bound to arrest as the section is not mandatory. It authorises him to make an arrest at his option.

Without warrant.—This section authorises the arrest without warrant while the issue of a warrant is most essential and important

¹. *Emp. v. Jusbally*, 29 Bom. 386.

for a search and conviction for gaming or keeping a common gaming house. It is under section . and 4 that a warrant under Section 5 of the Act authorises the presumption of guilt contemplated under section 6 of the Act.

Playing for money, etc.—Mere betting without stakes is no offence under this Section. the gist of the offence under this section is the stakes or betting with money or other valuable things, and it is no offence to play without stakes. If the play is carried on without valuable stakes it cannot be punished.² There can be no conviction unless the facts show that the persons accused of an offence under Section 18 of the Act were found playing for money or other valuable things with some instrument of gaming used in playing any game not being a game of mere skill.³

Instruments of gaming.—See notes under Section 4 *ante*.

Used in playing.—These words imply implies that the instruments must be actually used in the play.

A game of mere skill.—See notes under Section 12 *ante*.

Any public street, place or thoroughfare.—These terms have not been defined by the Legislature and they have to be construed with reference to the circumstances of a particular case as the occasion arises.⁴

The word "public" signifies a place to which the public resort as a matter of fact whether as of right or with the permission of the private owner.⁵

If the public have access to a place without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not.⁶

Where the place selected by the gamblers, (accused) charged under Section 18 is such that the intention of the accused is not to obtrude themselves upon members of the public, but on the contrary to conceal themselves and carry on the play secretly, they cannot be convicted under Section 18 of the Act for gambling in a public place. A low-lying *nala* selected as the place of gambling which is quite away from a road running parallel to it is not a public place.⁷

In order that a place may be called a public place it must be a place which is either open to the public or is used by the public, mere publicity of the situation does not make it a public place.⁸

2. *Emp. v. govind*, 16 Bom. 282.

3. *Gajju v. Emp.* 47 I. C. 433.

4. *Hari Singh v. Jadu Nandan*, 8 C. W. N. 458.

5. *Gajju v. Emp.* 47 I. C. 433.

6. *Sukhnandan Singh v. Emp.*, 40 All. 265; *Mohammad Khan v. Emp.*, 28 P. L. R. 577 = A. I. R. 1927 Lah 672.

7. *Govinda v. Emp.*, 162 I. C. 886 (Nag.)

8. *Babu Ram v. Emp.*, 126 I. C. 702 = A. I. R. 1930 Oudh 394; *Moola v. Emp.* 56 I. C. 672; *Lala and others v. Emp.*, 1930 Cr. C. (Oudh) 905.

In order to be a public place or a public thoroughfare the place or thoroughfare must either be open to the public or actually used by the public, and the mere publicity of the gambling place or its visibility from a public place or a public thoroughfare is not sufficient.⁹

A person may be on the private premises, yet if he stands or sits so as to be able to take bets from the public in a public street he is guilty of an offence under this section.¹⁰

The Act does not define what is a "public place" and it must be interpreted in connection with the expression "public street" and "public thoroughfare" which precede it.¹¹

Nature of the place must be reasonably determined by the context and the circumstance in which it has been used.¹² One of the essentials of a "public place" is that it must be a place akin to a "public street or thoroughfare," and must be one frequented by the public.

Public place—test.—The bank of a tank belonging to a temple, which is not enclosed and to which the public are allowed to have access is a "public place" within the meaning S. 518 of the Act. The question whether any place is a public place within the meaning of this section depends upon the character of the place itself and the use actually made of it. A public place is a place where the public go, whether or not they have a right to go.¹³

A public place must be interpreted in connection with a public street and public thoroughfare, with which it is joint. The fact that the gaming was going on at a place which was exposed to public view and not shut out does not make the place a public place.¹⁴

What is a public place —

- (1) *A bullock run* surrounded by low walls.¹⁵
- (2) *Chabutra of a temple* is a public place.¹⁶
- (3) *Compound of a temple* is a public place.¹⁷
- (4) *Field* from which crops have been reaped.¹⁸
- (5) *Football ground.*—If it is used by the public as of right it is a public place.¹⁹

9. *Emp. v. Sirpal*, 1934 Cr. C. 45 (All.)

10. *Fakirbhai Nathubhai v. Emp.*, A. I. R. 1925 Bom. 149; *Babu Ram v. Emp.*, A. I. R. 1927 All 560.

11. *Nga Hlwe v. Emp.*, 54 I. C. 50.

12. *Tulsi Das v. Emp.*, 22 A. L. J. 741.

13. *Gurbakh Rai v. Emp.* 198 I. C. 394=14 R. L. 376=43 Cr. L. J. 446=43 P. L. R. 725 AIR 1942 Lah. 36.

14. *Maruti v. Emp.* 1. L. R. (1945) Nag 431=216 I. C. 210=46 Cr. L. J. 147.

15. *Emp. v. Mian Din*, 38 All. 47.

16. *Emp. v. Chotey Lal*, 1895 A. W. N. 127.

17. *In re Musa*, 40 Mad. 556.

18. *Emp. v. Nag Himat Guji*, L. B. R. (1872—82) 317.

19. *Emp. v. Lalji*, 1922 Oudh 196.

- (6) *Grove*.—A private grove which is permitted to be used by the public on particular occasions.²⁰
- (7) *Hotel* is a place to which public have access.²¹
- (8) *Jamat Khana* of the Bohras is a public place.²²
- (9) *Open Space of Ground* near bazar not separated from it by well or fence.²³
- (10) *Osara* enclosed on all sides but opening towards the road.²⁴
- (11) *Market-place*.—Betting in a market-place on the price of cotton is betting in a public place.²⁵
- (12) *Serai* taken out on rent by a municipality and used as a hackney carriage stand.²⁶
- (13) *Threshing floor* is a public place as the public have access to it.²⁷
- (14) *Vacant site*.—The word "place" is wide enough to include a vacant site.²⁸
- (15) *Zayat* in the compound of a monastery.²⁹
- (16) *Grove*.—If the public have access to a place without its being refused or otherwise interfered with, that place is a public place irrespective of the fact whether the public have a right to go there or not. Groves in Indian villages are open to anybody to sit in, and there is normally no interference with anybody who wishes to have access to such groves. Hence grove is a public place.³⁰

What is not a public place.

- (1) *Boat* out at sea is not a public place.³¹
- (2) *Blind Alley* at a considerable distance from the public road.³²
- (3) *Canal Bank* not frequented by the public.³³
- (4) *Chabutra* to which the public have no access even if it adjoins a public road.³⁴
- (5) *Compound of private house* is not a public place.³⁵

20. *Sukhnandan Prasad v. Emp.*, 20 A. L. J. 80.

21. *Emp. v. Nag San Ye*, U. B. R. 1897—1901 Vol. I, 215.

22. *Emp. v. Walia Musaji*, 29 Bom. 226.

23. *Hari Singh v. Jadu*, 31 Cal. 542.

24. *Durga Prasad v. Emp.*, 31 Cal. 910.

25. *Tulsi Das v. Emp.*, 22 A. L. J. 741.

26. *Nara v. Emp.*, 89 I. C. 975=A. I. R. 1926 Lah. 149.

27. *Naga Po Tan v. Emp.*, U. B. R. 1897—1901 Vol. I, 217.

28. *Emp. v. Jagan*, 18 Mad. 40; *Radhe v. Emp.*, 9 I. C. 630.

29. *Emp. v. Naga San Ye*, U. B. R. 1897—1901, Vol. I, 215.

30. *Emp. v. Ballu Singh I L.R.* 1938 All 348—174 I. C. 556=1938 A. Cr. C. 10=1938 A.L.R. 299; 39 Cr. L. J. 441=1938 A.L. J. 102=A.I.R. 1938 All. 20).

31. *Emp. v. Jusuab Ally*, 29 Bom. 386.

32. *Mohd. Ali v. Emp.*, 68 I. C. 848.

33. A.I.R. 1921 Cal. 14.

34. *Emp. v. Sri Lal*, 17 All. 166.

35. *Emp. v. Kalandar Khan*, 1887 A. W. N. 75.

- (6) *Cultivated field* is not a public place.³⁶
- (7) *Garden or grove* is not a public place.³⁷
- (8) *Railway carriage* forming part of a through special.³⁸
- (9) *Railway station*.—The premises of a railway station to which the public have no right to go.³⁹
- (10) *Verandah of private house* attached to the room of a house looking on an alley.⁴⁰
- (11) *Lowlying nala* selected as the place for gambling which is quite away from a road running parallel to it is not a public place.⁴¹

Setting any birds, etc.—The Act provides punishment for setting birds and animals to fight only when carried on in a public place but it is no offence under the Act if it is carried on in a private house.⁴²

Brought without delay.—These words imply that the police-officer must take such person before a Magistrate at once and cannot detain him in his custody as provided by Section 61, Criminal Procedure Code.

Seize all instruments of gaming.—These words imply that the police officer cannot seize any money under this section but only instruments of gaming.⁴³

Deterring a public servant. Where a constable has received information that gambling is going on in a public thoroughfare he would under the law be entitled to apprehend the gamblers without warrant and if he is prevented from proceeding in that direction by use of criminal force by the accused, he is deterred from discharging his duty, viz., to arrest the gamblers and hence accused is guilty under Section 558, Indian Penal Code.⁴⁴

Cards, dice, etc.—See notes to Section 4 ante.

Mere game of skill.—See notes to Section 12 ante.

Aiding or abetting.—The provisions of the Indian Penal Code relating to abetment do not apply to offences under this Act. The aiding or abetting of gaming is not an offence under this section.⁴⁵ It penalises the aiding or abetting of public fighting of birds or animals, but mere spectators of gaming in a public gaming or fighting of birds or animals are not liable.⁴⁶

Instruments of gaming.—Cocks or fighting animals used in fighting are not instruments of gaming.⁴⁷

36. U. B. R. (1892—96) Vol. I, p. 117.

37. Ahmad Ali v. Emp., 1 A.L.J. 129; Emp. v. Ballu Singh, 1938 A.W.R. 118.

38. Emp. v. Husain Noor Mohammad, 30 Bom. 348.

39. Badruddin v. Emp. 57 I.C. 931.

40. Emp. v. Bhagwan, 1881 A.W.N. 17.

41. Govinda v. Emp., 162 I.C. 886.

42. 20 Cr. L. J. 330.

43. Emp. v. Ballu Singh. (1938) A.L.J. 102; Emp. v. Pokwye, 50 I.C. 671.

44. Ramdeo v. Emp., 1935 Cr. C. 542 (A.U.)

45. Shadi Ram v. Emp., A.I.R. 1933 Lah. 513.

46. Emp. v. Nga Kwye, L.B.R. 1872-74, page 163.

47. Emp. v. Maung Ka, 50 I.C. 666; Emp. v. Po Kawye, 50 I.C. 671.

Triable as summons case.—Offences under this section are to be tried as summons case under the provisions of Chapter XX of the Criminal Procedure Code.

Cross-examination of prosecution witnesses.—Witnesses for the prosecution can be cross-examined only once when they are examined-in-chief under Section 244, Criminal Procedure Code.

Summary trial.—An offence under this section is triable summarily under the provisions of Section 260, Criminal Procedure Code.

Applicability of Section 562, Criminal Procedure Code.—Section 562, Criminal Procedure Code, as amended in 1928, applies to convictions under the Gambling Act.

Applicability of Reformatory Schools Act.—The provisions of Section 4 (a) of the Reformatory Schools Act apply to a person convicted under the Act.

Application of Section 342, Criminal Procedure Code.—Provisions of Section 342, Criminal Procedure Code, apply to trials under the Act and if they are not complied with, the trial cannot be said to be a fair one.⁴⁸

Enhanced punishment.—The Act makes provisions for enhanced punishment for subsequent offences under Section 8 or 4 read with Section 15 of the Act but a person once convicted for an offence under this section is not liable to enhanced punishment on a subsequent conviction for an offence under this section.

Suspension of sentence.—A Magistrate may, under the provisions of Section 388, Criminal Procedure Code, suspend the execution of the sentence of imprisonment in default of fine.

Payment of fine by instalment.—A Magistrate may, under the provisions of Section 388 (a), Criminal Procedure Code, order the payment of fine by instalments.

Destruction of instruments of gaming.—This section authorises a Magistrate to order instruments of gaming to be forthwith destroyed upon the conviction of the offender.

Forfeiture.—This section does not authorise a Magistrate to order the forfeiture of the instruments or the money found on the spot and seized by the Police.⁴⁹ A Magistrate has no power upon a conviction under this section to order the confiscation of money found on the person of the accused.⁵⁰

Payment to Informer.—Under Section 16 of the Act a Magistrate is not competent to order the payment of a portion of the fine upon a conviction under Section 13 of the Act.⁵¹

48. *Emp. v. Sat Nyein*, 8 I.C. 988.

49. *Emp. v. Tota*, 26 All. 270, *Sant v. Emp.*, 18 P.R. 1891 Cr.

50. *Harihar v. Emp.*, A.I.R. 1938 All. 11.

51. *Emp. v. Ram Saran*, 2 P.R. 1870 Cr.; *Emp. v. The Zan.* L.B.R. 1872—92, p. 407.

Prosecution.—Under the provisions of Sections 498, Criminal Procedure Code, the public prosecutor can prosecute a case under this Act.

Withdrawal of Prosecution.—Under the provisions of Section 494, Criminal Procedure Code, a public prosecutor can apply for the withdrawal of prosecution under the Act and the Magistrate can give his consent to the withdrawal.⁵²

Who cannot conduct Prosecution.—A police-officer, who has taken part in the investigation of an offence, is not qualified to conduct the prosecution of the person.⁵³

Defences.—The following are a few instances of the defences possible in a case under the Act :—

- (1) That there was no profit or gain to the owner or occupier of the house.
- (2) That the game was a game of mere skill.
- (8) That the game was played for mere pleasure and not for gain.
- (4) That the house, etc., was not a common gaming house.
- (5) That the accused were not found inside the house.
- (6) That the accused was not taking any part in the gaming but was there present for some other purpose.
- (7) That no commission was charged either for the use of such house or the instruments of gaming.
- (8) That the warrant issued was not a legal warrant.
- (9) That the search was not in accordance with the provisions of the Act.
- (10) That it was an occasion of a festival such as *Dewali*.
- (11) That the case was an outcome of an enmity with the informer.
- (12) That the witnesses for the prosecution were inimical to the accused and had set up a false case against him.
- (18) That no instruments of gaming were found inside such house or on the person of those who were found inside such house.
- (14) *Alibi*, i.e., the accused was present at some other place and could not possibly be present at the gaming when the search was made. But the defence of *alibi* should be put only when there is unimpeachable evidence to support it.
- (15) In case of a prosecution under Section 18 of the Act it may be proved that the place was not a public place and a search and arrest without a warrant being illegal the accused should be acquitted.

52. *Emp. v. Hussain Haji*, 25 Bom. 422.

53. *Tribhuvandas v. Emp.*, 26 Bom. 533.

Judicial notice of the application of the Act—A Magistrate should take judicial notice of the application of the fact that the Act has been extended to the area where the offence is alleged to have been committed.⁵⁴

Appeal.—The Act makes no special provisions for appeals and the provisions of Chapter XXXI of the Criminal Procedure Code apply to appeals from convictions under the Act, and therefore appeals from convictions by a second or a third class Magistrate lie to the District Magistrate and from those of a first class Magistrate lie to the Sessions Judge. (See Sections 407 and 408, Cr. P.C.)

Revision. The provisions of Sections 435, 438 and 439, Criminal Procedure Code, apply to orders under the Act.

S. 13A. Nothing in this Act shall apply to any game of mere skill wherever played.

NOTES.

This section has been enacted by the United Provinces Amendment Act X of 1938.

The Punjab Act I of 1929, Section 9, also enacts the same section as Section 18 of the Act, and is a reproduction of Section 12 of the Imperial Act. This renders the use of the words "not being a game of mere skill" in Section 18 of the Act superfluous.

Nothing in this Act shall apply to any game of mere skill as distinguished from a game of chance or a game of chance and skill combined, unless it is carried on in a common gaminghouse.

S. 14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure as to the amount of fine or imprisonment he may inflict.

NOTES.

Analogous Law.—Bengal Act II of 1867, Section 12.

Any Magistrate.—A Magistrate having jurisdiction in the place where the offence is committed can try the case whether he is Magistrate of the First, Second or Third Class. But only a first class Magistrate can issue a warrant under Section 5 of the Act.

A Magistrate issuing a search warrant should not himself try such case as the accused has a right to examine the Magistrate as a witness as to the circumstances under which he issued the warrant.¹

It is a matter of great importance in a case under the Act that the issue of a warrant should be legal and regular and very often pleas on the illegality or the irregularity of the warrant are taken and sometimes it may be necessary to examine the Magistrate who issued the warrant. It is not desirable that the very Magistrate should try the case.²

A Magistrate who orders the prosecution upon consideration of information supplied to him is disqualified from trying the case as a Magistrate.³

Restrained within the limits, etc.—Such Magistrate cannot pass a sentence in excess of the powers conferred on him by the Code of Criminal Procedure.

For sentence which may be passed by a Magistrate see Section 32 of the Criminal Procedure Code.

S. 15. Whoever having been convicted of an offence punishable under Section 3 or 4 of this Act, shall again be guilty of any offence punishable under either of such sections shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees or to imprisonment for a term exceeding one year.

Local Amendments.

In Punjab this section has been replaced by the following two sections by the Amendment Act I of 1929 :—

15. Whoever having been convicted of an offence punishable under Section 3 shall again be convicted of any offence punishable under that section shall be punished—
 - (a) for a second offence with imprisonment of either description which may extend to six months or with fine which may extend to Rs. 1,000 or with both ;
 - (b) for a third or any subsequent offence with imprisonment of either description, which may extend to one year, and in the absence of special reasons to the contrary to be recorded in the judgment of the court shall not be less than one month, together with a fine which may extend to Rs. 1,000.

1. *Raja Ram v. Emp.*, 7 J. I. C. 521 (Lah.).

2. *Syam Behari v. Emp.*, 1914 Cr. C. All. 1305.

3. *Sheikh Moti v. Emp.*, 19 I. C. 949.

15A. Whoever having been convicted of an offence punishable under Section 4 shall again be convicted of any offence punishable under that section shall be liable for every such subsequent offence to double the amount of punishment to which he should have been liable for the first commission of an offence of the same description.

In Central Provinces.—Section 7 of the Central Provinces Amendment Act provides for the omission of the word and figure “Section 3 or” from Section 15 of the Act.

NOTES.

Analogous Law.—Bengal Act II of 1867, Section 18.

Object.—This section is to be read along with Sections 3 and 4 of the Act and provides for enhanced punishment for subsequent commissions of the offence of keeping a common gaming house and gaming therein.

It is not applicable to conviction under Section 13 of the Act as the wording of the section are is clear.

Having been convicted. The provisions of Sections 221 and 255A, Criminal Procedure Code, apply to trials under this Act and such previous conviction must be charged and proved in compliance with those provisions.¹

Double the amount of punishment.—This applies only to the United Provinces and the Central Provinces and not to the Punjab. The section has undergone some change in the Central Provinces where it is not applicable to convictions under Section 3 of the Act, but in the Punjab it has been replaced by two sections.

In the United Provinces.—This section has not been amended by any of the United Provinces Amendment Acts and it has been held in *Emp. v. Chunni*,² that under Section 3 read with Section 15 of the Act, a Magistrate is not competent to pass any sentence exceeding a fine of Rs. 400 or 6 months imprisonment; while in *Emp. v. Ganpat*,³ it has been held that under Section 4 read with Section 15 of the Act the utmost punishment allowed by law is a fine of Rs. 200 or rigorous imprisonment for 2 months.

A sentence of fine of Rs. 600 or imprisonment for one year cannot be passed on the accused until he has been convicted at one trial of two or more offences.⁴

In the Central Provinces.—Section 15 of the Act applies to convictions under Section 4 of the Act and not to convictions under Section 3 of the Act, as S. 7 of the Central Provinces Amendment Act III of 1927 has omitted the words “Section 3 or” from the Imperial Act. Hence an accused cannot be punished under Section 3 of the Act read with Section 15 of the Act. It is, therefore, not clear how a sentence of fine of Rs. 600 or of imprisonment for one year can be passed on accused as laid down in the Allahabad ruling mentioned above.

1. *Emp. v. Allo Mian*, 26 Bom. 129; *Annaji Ratan Lal*, p. 170; *Abdullah v. Emp.*, 11 Cr. L. J. 217.

2. 1881 A. W. N. 111.

3. 1881 A. W. N. 129.

4. *Emp. v. Chunni*, 1881 A. W. N. 111.

Punjab.—In the Punjab this section has undergone a great change, being replaced by Section 15 and Section 15A, fines under which not only exceed the amount of fine provided under the Imperial Act but also lay down the order in which the punishment is doubled as well as the minimum to be awarded for a third or any subsequent conviction.

Section 15 of the Local Act deals with punishments for offences under Section 3 of the Act while Section 15A of the Local Act deals with offences under Section 4 of the Act.

Imprisonment as well as fine.—Under the Imperial Act a sentence of fine as well as of imprisonment is illegal, but the local amendment has made a great departure and provides for a double punishment of fine as well as imprisonment upon a second conviction, while in case of a third or any subsequent conviction the accused must be inflicted with fine and imprisonment, it being imperative.

Punishment of fine.—The fine under the local amendment exceeds the amount of fine provided under the Imperial Act for convictions under Section 3 of the Act, but convictions under Section 4 of the Act are to be governed by the provisions of the Imperial Act as the local amendment has reproduced the original section of the Act omitting Section 3 from it, and has also omitted the proviso to the section. The Central Provinces Amendment and the Punjab Amendment are identical to some extent with regard to convictions under Section 4 of the Act.

Minimum fixed. This section also lays down the minimum penalty of one month's imprisonment for a third or any subsequent conviction under Section 3 of the Act and reasons must be recorded by the Magistrate if he does not award the accused with this minimum.

To which he would have been liable.—The phrase means the maximum penalty which could have been inflicted upon a first conviction and not the amount of punishment actually inflicted.

Fine exceeding six hundred rupees, etc.—The phrase applies only to the United Provinces and the Central Provinces and according to the scale given in the section a sentence of fine of Rs. 600 or of imprisonment of one year cannot be passed unless he has been convicted of two or more offences at one trial ⁵

S. 16. The Magistrate trying the case may direct any portion of any fine which shall be levied under Sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

NOTES.

Analogous Law.—

Bombay Act IV of 1887, Section 11.

5. Emp. v. Chuzni, 1881 A. W. N. 111.

Burma Act I of 1899, Section 16.

Object.—This section authorises a Magistrate to direct payment of a part of fine to the informer and as is evident from the language of the section it is only applicable to cases under Section 3 and 4 of the Act and does not apply to cases under Sections 18 of the Act.

Portion of fine or any part of moneys or proceeds, etc.—A Magistrate may award either a part of fine or part of the sale-proceeds of the articles seized or money ordered to be forfeited but he cannot award both.¹

Paid to an Informer.—The Magistrate is competent to order payment only to an informer. He cannot award a part of fine to police-officers or witnesses.²

S. 17. All fines imposed under this Act may be recovered in the manner prescribed by Section 61 of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

NOTES.

Analogous Law.—Bengal Act II of 1867, Section 14.

Object.—This section provides for the mode of recovery or realisation of the fines imposed under the Act and for its application subject to the orders of the Governors of the Provinces.

Section 61 of the Code of Criminal Procedure.—Under the present *Criminal Procedure Code* the procedure for recovery of fines is laid down in Sections 886, 887 and 888.

Be applied, etc.—Subject to the provisions of Section 16 of the Act regarding payment to an informer the various Local Governments of the United Provinces, Central Provinces, Punjab and Assam have enacted that fines realised under this Act are to be credited to Municipal Funds—

(1) United Provinces Municipalities Act I of 1916, Section 114.

(2) Central Provinces Municipalities Act II of 1926, Section 61.

(3) Punjab Municipalities Act II of 1922, Section 15.

(4) Assam Municipalities Act I of 1923, Section 51.

1. *Emp. v. Nga Po*, L. B. R. (1172—02) 378.

2. *Emperor v. Sant Ram*, 2 P.R. 1870 Cr.; *Banwari v. Emperor*, 20 A. L. J. 303.

Payment to Police in United Provinces.—The United Provinces Government also allow the following payment to the police, *vide* Government Order No. 1016—VIII-112-1st—14 of 1899, paragraph 3, dated 6th December 1899 :—

“ In regard to all gambling cases, the Lieutenant-Governor and Chief Commissioner is pleased to direct under authority vested in him by Section 17 of the Act, that whenever the Court considers it desirable that the Police should be rewarded, any balance of the fines realized which has not been granted by the Magistrate to an informer under Section 16 may be given to the Police in such manner as the District Magistrate and the Superintendent of Police may see fit to allot it.”

Lieutenant-Governor or Chief Commissioner—Now read “ Governor ”.

S. 18. Nothing in this Act shall apply to any game of mere skill wherever played. (Only applicable to the Punjab.)

NOTES.

This section applies only to the Punjab as it is not a part of the Imperial Act but has been added to the Act by Punjab Act of 1929 just as in United Provinces a new Section 13A has been added. Section 18 of the Imperial Act has been repealed by Act XVI of 1874, Section 1.

Game of mere skill.—See notes under Section 12 of the Act.

Object.—It may be respectfully submitted that the Punjab Amendment and the United Provinces Amendment Act, Section 13A, which are worded alike do not introduce any material alteration in the law, their enactment in these provinces renders the use of the words “ not being a game of mere skill ” in Section 13 of the Act superfluous.

THE MADRAS GAMING ACT III OF 1930.

Received the assent of the Governor-General on the 21st March, 1930.

An Act to provide for the punishment of gaming and the keeping of common gaming houses in the Presidency of Madras.

Preamble. WHEREAS it is expedient to make provision for the punishment of gaming and the keeping of common gaming houses in the Presidency of Madras; and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; It is HEREBY ENACTED as follows:—

Short title. 1. This Act may be called “The Madras Gaming Act, 1930.”

Extent 2. This Act extends to the whole of the Presidency of Madras with the exception of the city of Madras as defined in the Madras City Police Act, 1888.

Definitions. 3. In this Act, unless there be something repugnant in the subject or context,—

Common gaming house. “Common gaming house” means any enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such enclosure, room or place, whether by way of charge for the use of instruments of gaming or of the enclosure, room or place, or otherwise howsoever;

Gaming. “Gaming” does not include a lottery, but includes wagering or betting on a horse-race except when such wagering or betting takes place—

(i) on the date on which such race is to be run; and

(ii) in a place or places within the race enclosure which the authority controlling such race has with the sanction of the Local Government set apart for the purpose.

Instruments of gaming. “Instruments of Gaming” include an article used as a subject or means of, or for the purpose of carrying on or facilitating, or in connection with gaming, and any books, lists, tickets, forms intended to be used as a register or record or evidence of gaming.

Common gaming house—what is.—Under the definition of a common gaming house, the element of profit or gain is an essential ingredient and in any case where this has been negatived, there is nothing to warrant a conviction under S. 9 which postulates of course the position that persons found there were present for the purpose of gaming in a common gaming house.¹ A common gaming house does not cease to be such, simply because there is a restriction on its use by any section of the public. The definition of the term in the section warrants no such limitation. If a common gaming house had this limited meaning ascribed to it, it would be possible for any person to avoid the application of the Act by introducing some petty restrictions on certain classes of persons. Members of a particular caste might be excluded or even more fanciful restrictions might be applied still such restrictions cannot change the character of the common gaming house when instruments of gaming are kept or used therein for the profit of a person owning or occupying that house.² Under the definition of a common gaming house the element of profit or gain to the keeper being an essential ingredient, the mere fact that occasionally people used to play cards in a certain premises and perhaps for money, does not necessarily make the place a common gaming house without the proof of profit or gain to the owner or occupier.³

Gaming, what is.—"Gaming" as defined in s. 3 of Act III of 1920 does not include wagering or betting unless it be on a horse race; and a person using his house for receiving bets on daily closing prices of the New York Cotton Market cannot be convicted under s. 8 read with s. 3 of the Act for a keeping Common Gaming House.⁴ The definition of gaming in s. 3 includes only the actual wagering or betting on a horse race and does not include the subsequent act of payment of money or sharing of profits in pursuance of betting on a horse race as such payments cannot be regarded as part of such betting.⁵

4. (i) Whoever opens, keeps or uses, or permits to be opened, kept or used any enclosure, room or place for the purpose of gaming on a horse-race shall be liable on conviction to imprisonment not exceeding three months or for every day on which such enclosure, room or place is so opened, kept or used to a fine not exceeding five hundred rupees or to both.

Penalty for opening, etc., any enclosure, etc., for gaming on a horse-race.

(ii) Whoever is found gaming on a horse-race shall be liable, on conviction, notwithstanding any provision to the contrary in this Act, to a fine not exceeding five hundred rupees or to imprisonment not exceeding one month.

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1. *Kaza Satyanarayana In re* A. I. R. 1946 Mad. 112=(1945) 2 M. L. J. 521-223 I. C. 586=58 L. W. 642=1946 M. W. P. 8.
 2. *Kulandaiavelu Chettiar In re* 1938 M. Cr. C. 99=178 I. C. 123=39 Cr. L. J. 103-47 L. W. 643=A. I. R. 1938 Mad. 705=(1938) 2 M. L. J. 266=1938 M. W. N. 421.
 3. *Public Prosecutor v. Subramania Sastri* 1934 M. Cr. C. 349=155 I. C. 495=7 R. M. 582=36 Cr. L. J. 799=1934 M. W. N. 1170=1935 Cr. C. 927=41 L. W. 679=A. I. R. 1935 Mad. 648=68 M. L. J. 421.
 4. *Public Prosecutor v. Verajjal Sheth*: I. L. R. (1945) Mad. 67=220 I. C. 445=A. I. R. 1945 Mad. 164=(1945) 1 M. L. J. 163.
 5. *Kanniah Maistry In re* 1939 M. Cr. C. 257=50 L. W. 769=(1939) 2 M. L. J. 618=A. I. R. 1939 Mad. 576=41 Cr. L. J. 573.

Abetment.—There is obviously a wide difference between a person being present at a particular place for the purpose of gaming and his gaming at the place. It is only the latter act that is constituted an offence under S. 4 (i) of the Act; and not the former. Hence S. 6 of the Act cannot be invoked to sustain a conviction under S. 109 (abetment), I. P. C. read with S. 4 (ii) of the Act.¹

5. If any salaried Magistrate not inferior to a Magistrate of the second class or any Police-officer not below the rank of a Deputy Superintendent of Police has reason to believe that any place is used as a common gaming house, he may by his warrant give authority to any Police-officer, not below the rank of Sub Inspector, to enter with such assistance as may be found necessary, by night or by day, any such place, and to arrest all persons found therein and to seize all instruments of gaming, all moneys and securities for money and articles of value reasonably suspected to have been used or intended to be used or for the purpose of gaming which are found therein, and to search all parts of such place and also the persons found therein.

Power to grant warrant to enter a common gaming-house.

Warrant, requisites of.—There is no prescribed form for warrants under S. 5. The section does not require the Magistrate to record anywhere his reasons for believing any information the police may have given him. It does not even require him to record the fact that he has reason to believe that any place is used as a common gaming house. All that it requires is that the magistrate shall have reason to believe; if he has, he can issue his warrant, not in any particular form; but his warrant must be giving authority to the police officer to do certain things. When such requirements are complied with, the warrant issued will be a valid one to make the presumption under s. 6 available to the prosecution.¹

Warrant—presumption under S. 6 when arises.—It is desirable that officers who issue warrants under S. 5 take good care to employ the language of the section in the warrants, provided, of course, they are satisfied on the information received by them, that any place falls within the definition of a common gaming house within the Act. It is only if there is a proper compliance with the terms of S. 5 that the presumption under S. 6 will apply. In the absence of proof by specific evidence that a house was used for a profit or gain of the person owning or occupying it, the presumption under S. 6 does not arise and any conviction under the Act cannot be sustained.² The presumption

1. *Hannah Maistry In re* 1939 M. Cr. C. 257=50 I. W. 709=(1939) 2M. L. J. 618=A. I. R. 1939 Mad 576=41 Cr. L. J. 573.

Section 5

1. *Narayanappa In re* 1938 M. Cr. C. 96=176 I. C. 256=39 Cr. L. J. 710 (1)=11 R. M. 89=1933 M. W. N. 319=47 L. W. 750=A. I. R. 1938 Mad. 550=(1933) I. M. L. J. 501

2. *Thambi Iyengar In re* 1945 M. W. N. 771 (1)=58 L. W. 637 (1)=(1945) 2 M. L. J. 537=A. I. R. 1946 Mad. 157.

referred to in S. 6 can only apply to searches conducted in pursuance of a warrant issued under S. 5. Hence where the warrant does not purport to have been issued under S. 5 of this Act but is issued under S. 96, Cr. P. C. without any mention of the nature of the premises to be searched there can be no presumption under S. 6 arising and there can be no conviction under S. 9 of the Act.³ Under S. 8, a common gaming house means any enclosure, room or place in which cards, dice, etc., are kept or used for the profit or gain of the person owning, occupying, using or keeping the enclosure, room or place. In the absence of evidence of such instruments of gaming being kept or used there, the accused cannot be convicted. A presumption that the place was used as a common gaming house may be drawn from the presence of the cards, dice, etc. at the place, only where the warrant has been issued under S. 5 by a Magistrate who has reason to believe that the place was used as a common gaming house.⁴ A warrant issued under S. 5 by a Magistrate for searching a place need not contain the actual words "reason to believe" used in the section. But if the warrant is issued after due examination of the police for being satisfied as to the truth of the information, and if the language used in the warrant is not inconsistent with the fact that the Magistrate had reason to believe that the premises were used as a common gaming house the presumption referred to in S. 6 arises.⁵ It is not necessary that before the presumption under S. 6 can be available there must be some evidence for the prosecution that the warrant was issued under S. 5 upon proper information sufficient to lead a Magistrate to believe that a room in question was used as a common gaming house. Once the Magistrate issues a warrant under S. 5 which is proper and valid and on information, there is no reason why the presumption under S. 114 Illus. (c), Evidence Act, that judicial and official acts have been regularly performed should not be applied. It would be against public policy in most cases if the prosecution were compelled to let in evidence in regard to the material on which a Magistrate acted.⁶

Search by officer entitled to search but without warrant—effect.— Where the police entered a house alleged to be a common gaming house in contravention of S. 5, no presumption could be drawn under S. 6. S. 5 no doubt authorises a police officer not below the rank of a Deputy Superintendent of Police to issue a search warrant, but it is not expressed that a Deputy Superintendent himself is a person authorised to search. Therefore in such a search, without a warrant under S. 5, conducted by a Deputy Superintendent of Police, the cards, dice etc., found will be relevant as circumstantial evidence without establishing any statutory presumption. That being so, even if the police in such a case had conducted the search under proper warrant, there still would not be sufficient evidence forthcoming, to establish the guilt of the accused. There would only be circumstantial

3. Public prosecutor v. Subramania Sastri 1934 M. Cr. G. 349 = 155 I. C. 406 = 7 R. M. 582 = 36 Cr. L. J. 793 = 1934 M. W. N. 1170 = 1935 Cr. C. 927 = 41 L. W. 679 = A. I. R. 1935 Mad. 648 = 68 M. L. J. 421.

4. Chellakani Sahib *In re* (1944) 2 M. L. J. 408.

5. Subramania Ayyar *In re* 1935 M. Cr. G. 501.

6. Kolandainadu Chettiar *In re*: 1938 M. Cr. C. 99 = 178 I. C. 123 = 47 L. W. 643 = 39 Cr. L. J. 1003 = 1938 M. W. N. 421 = A. I. R., 1938 Mad. 705 = (1938) 2 M. L. J. 266.

evidence which taken in conjunction with other evidence might or might not have been significant.⁷

6. Any cards, dice, gaming table or cloth, board or other instruments of gaming found in any place entered or searched under the provisions of the last preceding section, or on any person found therein shall be evidence that such place is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Police-officer or any of his assistants.

Cards, dice, etc. found in search under last section to be evidence that such place is a common gaming house.

Search to be proper for raising presumption.—Where a search was made by a police officer below the rank of a Sub-Inspector of Police, the search cannot be deemed to be one under S. 5. It would follow from this that the presumption enacted in S. 6 cannot arise in this case, for, that presumption arises only when the search is properly made under S. 5 of the Act. If this presumption goes, as it must, the conviction based on it must also be set aside.¹

Material objects found in search—Effect.—Material objects found in a house raided by the Police can be used as evidence in the same way as any other material objects can be used. S. 6 does not mean that where the police have not seen the actual gaming, they must prove the use of the articles for gaming by outside evidence. S. 6 is capable of only one reading and that is that the mere finding of the articles in the gaming house raises a presumption of the purpose of the articles and the court can act on it.²

Scope of Sections 5 and 6.—To overcome the difficulty of relying on presumptions and of obtaining proof, special rules of evidence are created in S. 6 read with S. 5 of the Act. Under the sections, instruments of gaming found in any place searched under a warrant from specified persons who “had reason to believe” that the place issued is a common gaming house “shall be evidence”, that the place was a common gaming house and that the persons found there were engaged in gaming. As the warrant is the chief factor for the raising of the presumption, it is necessary that there are *proper reasons* for the belief in the mind of the person issuing the warrant. The reasons which prevailed with the Magistrate or with the police officer to issue the warrant must be put before the court and must be tested before a person can be convicted. If the reasons which induced a Magistrate or the police officer are not put before the Court, the mere finding of the instruments of gaming in the execution of the warrant, though ‘evidence’ cannot be sufficient evidence *i. e.*, as “proof” that the place is a common gaming house. That the Magistrate was “led to believe” is not the same as “had reason to believe”, and the

7. *Public Prosecutor v. Sultan Muhammad Sahib*, 1931 M. Cr. C. 303.
Section 6

1. *Kuppuswami Chetty In re* 1034 M. Cr. C. 152.

2. *Alagappa Chettiar In re*: 1932 M. Cr. C. 192—I. L. R. 1932 Mad. 720=139 I. C. 473=33 Cr. L. J. 790=36 L. W. 620=1932 M. W. N. 641=1932 Cr. C. 836=A. I. R. 1932 Mad. 678,

warrant under the Act requires the latter element to its being a proper one. If, as a result of the search, only cards or other instruments of gaming are found, no conviction can be sustained. But if the doors of the house searched are found shut and bolted from inside, and the inmates are found gambling on observation through a window, and when the police break in, the gamblers scatter, hide themselves after putting out the lights and pretend to sleep and if the police, getting inside seize moneys from the person of the gamblers, the conviction cannot be assailed. The proper inference to be drawn under the circumstances is that the place is a common gaming house.³

7. It shall not be necessary in order to convict any person of keeping a common gaming house or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager, bet or stake.

Proof of playing for stakes unnecessary.

8. Whocver opens, keeps or uses, or permits to be used any common gaming house, or conducts or assists in conducting the business of any common gaming house or advances or furnishes money for gaming therein, shall be liable on conviction to fine not exceeding five hundred rupees or to imprisonment not exceeding three months, or to both.

Penalty for opening, etc., a common gaming house.

Game of darts—side betting—offence.—

Accused 1 and 2 were running a gaming house, the game being one of darts. There was also side betting.

Held, that though with regard to the thrower of the darts, the game was one of skill, there was no question of skill involved in the side-betting, and hence accused 1 and 2 were guilty of the offence punishable under S. 8 of the Act.

Held further, that a servant engaged only in handing over the darts to throwers would not be guilty of any offence.¹

Keeper of gaming house, who is —

Where a person has the control of the house—whether where a person has the control of himself or of some other—and knows that gambling was going on there, he would be considered as a person deriving profit so long as rent is paid for the house and would be liable to conviction under S. 8.²

3. *Kasanna Chetty, In re* 1937 M. Cr. C. 295=1937 M. W. N. 1068=(1937) 2 M. L. J. 741.

Section 7

1. *Manavala Naidu v. Emp.* (1944) M. W. N. 438=A. I. R. 1944 Mad. 447=(1946) 2 M. L. J. 42.

2. *Kulandaivek Chettiar In re* 1938 M. Cr. C. 93=A. I. R. 1938 Ma. 1. 705=39 Cr. L. J. 1003=(1938) 2 M. L. J. 266=47 L. W. 643.

9. Whoever is found gaming or present for the purpose of gaming in a common gaming house shall on conviction be liable to fine not exceeding two hundred rupees or to imprisonment not exceeding one month; and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Penalty for
being found
gaming in a
common gaming
house.

Servants conviction of.—

The servants of the keeper of a common gaming house who are not alleged or shown to have been gambling are not liable to conviction along with their master under S. 9, when there is no proof that they were also gambling.¹

Evidence negating elements of profit or gain. —

Under the definition of a "common gaming house" as defined in S. 8 of the Madras Gaming Act the elements of profit or gain is an essential ingredient and, when this is negated by the evidence in the case, there is nothing to warrant a conviction of the persons found in such house under S. 9 of the Act which postulates of course the position that persons found gaming were present for the purpose of gaming in a gaming house. All that S. 6 of the Act says is that the instruments of gaming and the persons found in a place searched under S. 5 shall be evidence that such place is used as a common gaming-house and that the persons found therein were present for the purpose of gaming, although no play was actually seen by the police-officer or any of his assistants. It is only a piece of evidence in support of the prosecution for an offence under S. 9. But it would be wrong to treat it as conclusive evidence warranting a finding of guilt of the persons found therein without anything more.²

Sentence.—In a prosecution against the keeper of a common gaming house along with other players who were merely engaged in gambling, the trial court must make a difference in the sentence since it must be admitted that a person who keeps a common gaming house for his profit or gain is the guiltiest of all and the same severity should not be shown to the players unless it is shown that they were habitual gamblers and unless any particular reason is given for treating them with the same severity as the person keeping the common gaming house.³

10. On conviction of any person for keeping a common gaming house, or being present therein for the purpose of gaming, all the instruments of gaming found therein may be destroyed by the order of the Magistrate, and such Magistrate

Instruments of
gaming may be
ordered to be
destroyed on
conviction.

1. Venkatachalam Chettiar, In re. 1939 M. W. N. 883 (2)—1939 M. Cr. C. 251 = 50 L. W. 458 A. I. R. 1940 Mad. 227.
2. Satyanarayana, In re. 58 L. W. 642 = (1945) 2 M. L. J. 521.
3. Rattayya In re, 1937 M. Cr. C. 60.

may order all or any of the other articles seized, or the proceeds thereof, to be forfeited.

Confiscation of money.—Under S. 5 of the Gaming Act, there is no necessity on the part of the prosecution to prove that money seized from persons in a gaming house was used or even intended to be used for gaming, because the police are entitled to seize on reasonable suspicion. If the Magistrate, under S. 10 of the Act, considers that the money was seized on reasonable suspicion, he is entitled to order it to be confiscated. Where the Magistrate brings his mind to bear on the question and is satisfied that the persons found in a common gaming bouse intended to use the money found on their persons for the purpose of gaming, he is justified in ordering confiscation.¹

Confiscation of moneys found on persons.—On a conviction for gambling and for keeping a common gaming house under S. 8 and 9 of the Gaming Act, it is not competent to the court to pass an order of confiscation as regards the moneys found on the persons of the accused who are convicted of gambling though such an order is perfectly legal as regards moneys found in the place where the gambling took place because the latter must have been used for the purpose of the gambling. A difference must also be made, as regards the fines to be imposed, between the gamblers and the person who keeps the gaming bouse, the latter being the guiltiest of all. The former should not be treated with the same severity as the latter.²

11. Nothing in Sections 5 to 10 of this Act shall be held to apply to games of mere skill wherever played.
Saving of games of skill.

12. Whoever is found gaming with cards, dice, counters, money or other instruments of gaming in any public street, place or thoroughfare or publicly fighting cocks, shall be liable on conviction to a fine not exceeding fifty rupees or to imprisonment not exceeding one month; and such instruments of gaming and money shall be forfeited.
Penalty for gaming in public street, etc.

“Place”—Gambling in tank bed—Gist of offence committed in public place.—The word “place” in S. 12 of the Madras Gaming Act means a place akin to street or thoroughfare used regularly and necessarily by people going from one place to another. The real offence under S. 12 is the obstruction or annoyance to way-farers and pedestrians. It is only gambling in a public street, place or thoroughfare that is an offence. Playing cards for money in a tank bed at 8-80 p.m. is not an offence punishable under S. 12 in the absence of proof of an obstruction and annoyance.¹

1. Rameswara Sarma, *In re*. 201 I. C. 385=15 R. M. 343=43 Cr. L. J. 660=1942 M. W. N. 289(1)=55 L. W. 128(1)=A. I. R. 1942 Mad. 287=(1242) 1 M. L. J. 202.

2. Rattya v. Emperor, 1937 M. W. N. 89.

Section 12

1. Unna Mohammad Sahib *In re* 1937 M. W. N. 1126=46 L. W. 641=1937 M. Cr. C. 310=I. L. R. 1938 Mad. 347=39 Cr. L. J. 277 (1)=A. I. R. 1938 Mad. 74.

Pial of private residence, if a public place'.—The pial of a private residence is not a public place though it is alongside a public road accessible from it; and a conviction under S. 12 is unsustainable if persons are found gaming on the pial.²

13. Any Police-officer may arrest without a warrant any person committing in his view any offence made punishable by this Act.
Police may
arrest without
warrant on view
of offence

14. Clause (10) and the last paragraph of Section 3 and Section 6, 7 and 9 of the Towns Nuisances Act, 1889, are hereby repealed.
Repeal.

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THE BOM. PREVENTION OF GAMBLING ACT, 1887

Bombay Act No. IV of 1887

[5th January, 1888]

(As amended by Bombay I of 1890, I of 1910, VI of 1919, V of 1922, V of 1926, XIV of 1929, III of 1931, XII of 1934, I of 1936, II of 1941, XVII of 1945 and modified by the Government of India Order, 1937, and repealed in part by Act XVI of 1895)

An Act to consolidate and amend the law for the prevention of Gambling in the Presidency of Bombay

WHEREAS it is expedient to consolidate and amend the law for the prevention of Gambling in the Presidency of Bombay; It is enacted as follows:—

Short title. 1. This Act may be cited as the Bombay Prevention of Gambling Act, 1887.

Extent. It extends to the City of Bombay, to the Island of Salsette, to all* railways and* railway station-houses without the said city and island, and to all places not more than three miles distant from any part of such station-houses, respectively, and all or any of its provisions may be extended from time to time by the Provincial Government, by an order published in the *official Gazette*, to any local area in the Presidency of Bombay.

The Provincial Government may, from time to time, by an order published as aforesaid, cancel or vary any order made by it under this section.

2. [*Repeal of enactments*] *Repealed by Act XVI of 1895.*

3. In this Act “gaming” includes wagering or betting
“gaming” except wagering or betting upon a horse-race,
defined. when such wagering or betting takes place—

(a) on the day on which such race is to be run, and

(b) in an enclosure which the licensee of the race-course, on which such race is to be run, has set apart for the purpose

*These words were inserted in section 1 by the Bombay Repealing and Amending Act 1910 (Bom. I of 1910), First Schedule, Part II, Serial No. 16.

under the terms of the license issued under section 4 of the Bombay Race-Courses Licensing Act, 1912, in respect of such race-course, and

(c) between any individual in person, being present in the enclosure, on the one hand, and such licensee or other person licensed by such licensee in terms of the aforesaid licence on the other hand or between any number of individuals in person in such manner and by such contrivance as may be permitted by such licence;

but does not include a lottery.

Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for another in any capacity whatever to wager or bet whether with such licensee or with any other person shall be deemed to be "gaming": Provided, nevertheless, that such licensee may employ servants, and persons may accept service with such licensee, for wagering or betting in such manner or by such contrivance as may be permitted in such license. The collection or soliciting of bets, receipt or distribution of winnings or prizes in money or otherwise in respect of wagering or betting or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution shall be deemed to be 'gaming'.

In this Act the expression "instruments of gaming" includes any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as register or record or evidence of any gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming.

In this Act "common gaming-house" means a house, room or place in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying* or keeping such house, room or place or of the person using such house, room or place whether he has a right to use the same or not, such profit or gain being either by way of a charge for the use of the instruments of gaming or of the house, room or place or otherwise howsoever.*

*These words at the end of the last para. of this section were substituted for the words "using or keeping such house, room or place, whether by a charge for use of the instruments of gaming or of the house, room or place, or otherwise howsoever" by Bom. Act II of 1941, s. 2.

NOTES.

Gaming, what is.—Gaming includes every kind of game which is played for money and all wagering or betting except wagering or betting on a horse race done personally on a race day with the licensee of the race course within enclosure of the race-course. Gaming as defined by S. 3 as amended in 1936 includes various ancillary and accessory acts, among others the carrying or conveying of the winnings of gaming for the purpose of distribution. But gaming is no offence unless it falls under Section 4 or S. 5 or S. 12.¹ Where in a certain game, certain operations are to be performed to enable the gamester to play the game, the person taking part in such operations must be deemed to be gaming within the meaning of the Act.²

The expression “using or keeping” means having a right to use or keep and if the accused is not a person having a right to use this passage then it would be irrelevant to prove that he is making a profit out of the gaming carried on there. To bring the case within the definition under S. 3 it is necessary to show that profit was to be made for the person knowing, keeping or using the passage.³

S. 3 makes gaming, the collection or soliciting of bets and it makes no difference if these bets are brought by a messenger or person sent by telephone or sent and received by telophone. Therefore, a person caught actually in the act of taking bets over telephone can be rightly convicted of gaming.⁴

The words “or in any other manner” cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner *ejusdem generis* with what precedes those words; consequently even the hope of making a profit out of gambling itself is sufficient to satisfy the requirements of the definition of the common gaming house.⁵

The accused kept a certain shed. The people frequented the shed to bet on the quantity of rain which may fall in a given time. The instruments kept there and used for such purpose were a rain gauge and a gutter. The rainfall used to be registered by the accused, who, after deducting a commission on each bet, paid over the money to the winner. *Held*, that although the place was used as a common betting house and the instruments were those of betting, there was no gaming, as there was no contest, no players, and no participation by the players, save as onlookers, and the place was not a common gaming house; the accused was not therefore, guilty of an offence under s. 4 (b) and (c) of Bombay Act IV of 1887. It would be an undue straining of the word “gaming” to hold that it covered “rain betting.”⁶

1. *Emp v. Somabhai* 40 Bom. L. R. 1082.

2. *Mohd. Hassan v. Emp.* 1937 Sind, 99=169 I. C. 35=38 Cr. L. J. 668=31 S. L. R. 44.

3. *Ibrahim Haji Abdul Majid v. Emp.* I. L. R. (1940) Bom. 322=A. I. R. 1940 Bom. 129=42 Bom. L. R. 161=41 Cr. L. J. 571=180 I. C. 316.

4. *Bhagwan Das v. Emp.* I. L. R. (1940) Kar 150=1910 Sind 28=471 Cr. L. J. 399.

5. *Emperor v. Chiman Lal*, 1945 Bom. 315=47 Bom. L. R. 75=47 Cr. L. J. 109=221 I. C. 18.

6. *Queen Empress v. Narottamdas Motiram*, 13 B. 681.

A bet need not be as regards the issue of a future uncertain event and may be upon a past event, *e.g.*, whether a particular horse won a race in a certain year. In such a case the bet is upon the accuracy of the information, belief or memory of the parties and the event is the proof that one or the other was accurate. A person may bet against what he believes the issue will be *e.g.*, a man may bet against a horse which he believes will win in order to secure himself against loss in either event.⁷

Instruments of gaming.—The word “used” in this section must be taken in its ordinary sense as meaning actually used. Any article which is in fact used as a means of wagering comes within the definition of “an instrument of gaming” even though it may have been specially devised or intended for that purpose.⁸

A marked coin becomes an instrument of gaming if it has been in fact used as a means of gaming.⁹

A single page of paper used for registering wagers is an instrument of gambling within the meaning of S. 3 of Act IV of 1887.¹⁰

A book used for recording entries of the bets made by those frequenting a place is an instrument of gaming within S. 3.¹¹

Books used for the purpose of registering or recording any gaming transaction would fall within the definition of “instruments of gaming.” A register of record of transactions in American Futures was held to be an instrument of gaming; so also a book which contained a register of Kacha Khandi transaction and Teji Mandi transactions.¹²

Marked coin.—A marked coin may be an instrument of gaming. It becomes an instrument of gaming if it has in fact been used as means of gaming.¹³

Satta Book.—In execution of a warrant issued under s. 6 of Act IV of 1887 an ank satta book was found in the house of the accused. It appeared that there was betting in the house and that the bets were recorded in the book in his handwriting. It was also shown that he got one per cent on the bets; and he himself admitted that the book was used for betting. Held, (1) that these circumstances put together justified the conclusion that the book was an instrument of gaming kept and used in the house for the purpose of profit by the accused, within the meaning of S. 4 (a); (2) that direct evidence was not necessary to prove the use of the book in the house and such use might be inferred from the facts and surrounding circumstances found to exist.¹⁴

7. *Emperor v. Ismail Hirji*, 31 Bom. L. R. 1349=1930 Cr. C. 113=54 Bom. 146=31 Cr. L. J. 793=A. I. R. 1930 Bom. 49.

8. *Queen Empress v. Kanji* 17 Bom. 84.

9. *Krishnaji Madhusudan* 41 Bom. L. R. 1114=1940 Bom. 18=41 Cr. L. J. 273=18 I. C. 242.

10. *Emperor v. Lakhamsi Malji*, 29 B. 264=6 Bom. L. R. 1031.

11. *Mani Lal Mangalji v. Emperor*, 40 Bom. 263=31 I. C. 1003=17 Bom. L. R. 1080=16 Cr. L. J. 827.

12. *Emperor v. Thavarmai Rupchand*, 53 Bom. 367=116 I. C. 251=31 Bom. L. R. 158=30 Cr. L. J. 595=12 A. I. R. Cr. R. 266=A. I. =1929 Bom. 257.

13. *Emperor v. Krishnaji Madhusudan*, 41 Bom. L. R. 1114.

14. *Emperor v. Narotam Motiram*, 5 Bom. L. R. 1047.

Betting slips with numbers on them employed in 'satta' gambling are instruments of gaming.¹⁵

A marked coin proved to have been used for the purpose of making a bet is an instrument of gaming.¹⁶

Wagering was carried on the figures which denoted the prices in Calcutta of the auction sales of opium chests. The wagers were recorded in books, the different pages of which had the various units stating the amounts of their wagers. The winning numbers were communicated by means of telegrams from Calcutta. Held, that the books and telegrams were "instruments of gaming" within the meaning of S. 8 and that the persons dealing with these were guilty under S. 4. Held also, that this particular wagering was not a 'game' within the meaning of S. 5 and that, therefore, the presumption allowed by S. 7 of the Act was not applicable and that the accused could not be convicted under S. 5 of the Act.¹⁷

Although currency notes and cash found on the person alleged to be gambler cannot in themselves be regarded as "instruments of gaming" but if they are used as a subject or means of gaming they would fall within the definition of "instruments of gaming."¹⁸

Telegrams announcing certain events and pieces of paper used by brokers for recording transactions are not instruments of gaming.¹⁹

Common Gaming-house.—The words "or in any other manner" cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner *ejusdem generis* with what precede these words. Consequently even the hope of making a profit out of the gambling itself is sufficient to satisfy the requirements of the definition of the Common Gaming-house.²⁰

"Using"—Meaning of—Passage.—The word "using" in the definition of a common gaming house in S. 8 of the Bombay Prevention of Gambling Act connotes some sort of right or some sort of possession. The use is not of the kind prohibited unless it imports some measure of possession or control, for the person using as one who although the designations of owner, occupier or keeper do not apply to him, is nevertheless some other person who is analogous to, and is of the same terms as owner, occupier or keeper. In cases where a passage is a place to which the public have access, or are permitted to have access there may be an offence under S. 12.²¹

Passage surrounded by building.—Where the passages are surrounded by building and are closed at night by doors and the accused have

15. Ram Sahai v. Emp. 1934 Lah. 760=35 P. L. R. 614=36 Cr. L. J. 418=153 I. C. 443 (1).

16. P. X. De Souza v. Emp. 1932 Bom. 180=137 I. C. 188=33 Cr. L. J. 404=34 Bom. L. R. 286; 56 Bom. 200.

17. Emp. v. Tribhovandas Brijbhukandas, 25 B 593=4 Bom. L. R. 271.

18. Tribhovan Moti Ram v. Emp. 53 Bom 137=117 I. C. 434=31 Bom. L. R. 53=30 Cr. L. J. 794=A. I. R. 1929 Bom. 74.

19. Jesang Motilal v. Emp. 30 I. C. 124=16 Cr. L. J. 572=17 Bom. L. R. 600.

20. Emp. v. Chimman Lal, 1945 Bom 305=47 Cr. L. J. 103=47 Bom. L. R. 75=221 I. C. 18.

See also notes under S. 7.

21. Emp. v. Krishan Ji Madhasudan, 41 Bom. L. R. 1114.

appropriated them for the business of betting, the business of betting is localized and this localization converts the passage into a "place," within the meaning of Ss. 8, 4, and 6 :²²

Meaning of place.—A small open space surrounded by houses on all sides and accessible only by narrow lane is a 'place' within S. 4 (a) of the Act.²³

Public Road.—No doubt, a penal enactment has to be applied strictly, but the obvious intention of the legislature when expressed in clear terms must be given effect to. The definition of "common gaming house" is wide enough to include a public road.²⁴

Table with cover with numbers on.—The accused opened a shop wherein he kept a table with a cover on it. The cover had on it numbers 6 to 86. They were not consecutive number. On each number was placed an article as a clock, a watch, etc., of the value ranging from Rs. 1-8-0 to Rs. 15. Any customer who paid Rs. 2 was given by the accused six dice. The dice had six sides, each of which bore marks ranging from one to six. The customer was allowed one throw of the dice, and the number of points thus obtained was to entitle him to obtain the article placed on the corresponding number on the cloth. Held, that the shop was a common gaming-house, and the persons keeping the house and playing therein were punishable under Ss. 4 and 5 of Bombay Act IV of 1887.²⁵

Stranger obtaining a bet on horse race.—From the fact that a stranger went into the house and obtained a bet on a horse race, coupled with the discovery of documentary evidence such as betting book, etc., found when the police searched the house very shortly afterwards, the proper inference that the house was a common gaming-house can be drawn.²⁶

4. Whoever—

Keeping
common
gaming-house.

(a) [opens, keeps or uses any house, room or place]* for the purpose of a common gaming-house,

(b) being the owner or occupier of any such house, room or place knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

22. *Emp. v. Ismail Hirji*, 31 Bom. L. R. 1349=1930 Cr. C. 113=51 Bom. 146=31 Cr. L. J. 633; A. I. R. 1930 Bom. 49.

23. *Eattu Mahomed v. Emp.* 14 Cr. L. J. 419=37 Bom. 651=20 I. C. 609=15 Bom. L. R. 689.

24. *Bapulal In re* I. L. R. 1936 Nag. 89=162 I. C. 332=8 R. N. 259=37 Cr. L. J. 588=1936 Cr. C. 549=A. I. R. 1936 Nag. 78.

25. *King Emp. v. Ahmad Haji*, 4 Bom. L. R. 297.

26. *Emp. v. Abasbhai*, 50 Bom. 344=28 Bom. L. R. 272=27 Cr. L. J. 503=93 I. C. 96=A. I. R. 1926 Bom. 195.

*These words were substituted for the words "being the owner or occupier or having the use of any house, room or place, opens, keeps, or uses the same" by Bom. Act II of 1941, s. 3.

(c) has the care or management of, or in any manner assists in conducting the business of, any such house, room or place opened, occupied, kept or used for the purpose aforesaid,

(d) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place,

[shall, on conviction, be punishable]†

‡(a) for a first offence with imprisonment §“ which may extend to seven months, or with fine which may extend to one thousand rupees, or with both : provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one month and fine shall not be less than five hundred rupees ;]

(b) for a second offence with imprisonment which may extend to ¶ “ twelve months, either with or without fine which may extend to two thousand rupees : provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than three months and fine shall not be less than one thousand rupees ;] and

(c) for a third or subsequent offence with imprisonment which may extend to* [c] “ twelve months, either with or without fine which may extended to two thousand rupees : provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees.]] ” *

Applicability and scope.—The words “ having the use of ” in Section 4 (a) must be read *ejusdem generis* with the previous words “ owner or occupier ” and mean “ a person having the right to the use of ” under some title *e.g.*, as licensee, which is less than ownership or right of occupation. The entire section 4 is directed against those who enable premises to be

†These words were substituted for the original words “ shall be punished ” by Bom. Act I of 1930.

‡Clauses (a), (b) and (c) were substituted for the original clause by Bombay Act V of 1922, s. 3.

§These words were substituted for the original words by Bom. Act I of 1936, s. 3.

¶These words were substituted by *ibid* s. 3 (3).

*These words were substituted by *ibid*, s. 3 (4).

used as a common gaming house. Therefore, in the absence of evidence from which it can be held that the accused had got anything in the nature of a house to use the place as a common gaming house from a person entitled to give such house he cannot be convicted under Section 4 (a).¹

Proof requisite for conviction.—It is necessary for a conviction under Section 4, Bombay Gambling Act, to prove that the owner or keeper of the house was in some way or other deriving a profit from the use of the house or of the gaming instruments. The fact that a small sum of money is set on one side in a particular receptacle does not lead to the conclusion that it was kept aside as a remuneration for the keeper of the house.²

Owner or occupier—proof.—In order to establish an offence under Section 4 of keeping a common gaming house, it is necessary to show, in the first place, that the person charged is the owner or occupier or a person having the use of the place in question. It is not sufficient to show that the accused used the place for the purpose of gambling there.³

Habitual use is not necessary.—Under Section 4, it need not be shown that the house was habitually used for gaming.⁴

Whether express proof of profit or gain necessary.—It is not necessary to prove expressly that the person charged with keeping a common gaming house made a profit or gain out of the gambling carried on in that house. A mere expectation or hope of profit would be sufficient to make the house a common gaming house and the occupier liable for keeping such a house.⁵

"Having the use of" Interpretation.—The words "having the use of" in Section 4 (a) of the Prevention of Gambling Act, in the context seem to imply something more than mere using even though the use may be habitual.⁶

Joint owner of house.—Where the joint owner of house is present when gaming is presumed to be going on in his house, he can be convicted under Section 4 for having knowingly permitted the house to be used as a gaming house.⁷

Place where Jota business is carried on.—A person keeping for his profit a place where brokers and others carry on Jota business, i.e., wagering from day to day on the total sale of cotton bales in Liverpool, and where the wagering books are kept or used, is guilty of keeping a

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1. Ghulam Husain v. Emp. I. L. R. (1940) Bom. 105=1940 Bom. 62=41 Bom. L. R. 1326=41 Cr. L. J. 253=186 I.C. 148.
 2. Ismail Varyo v. Emp. 28 S. L. R. 81=A. L. R. 1934 Sind 131=152 I. C. 400=7 R. S. 95=1934 Cr. C. 1065=36 Cr. L. J. 204=A. I. R. 1934 Sind 129.
 3. Emp. v. Wallia Musaji, 29 B. 226=7 Bom. L. R. 16=2 Cr. L. J. 26 (R. 167 P. L. R. 1905.)
 4. Bhanji v. Emp. 20. S. L. R. 10=27 Cr. L. J. 905=96 I. C. 217=A. I. R. 1926 Sind. 254
 5. Emp. v. Chimanlal Sankal Chand. 47 Bom. L. R. 75=A.I.R. 1945 Bom. 105.
 6. Emp. v. Krishanji Madhusudan, 41 Bom. L. R. 114.
 7. Emp. v. Nanatal Dwarikadas, 32 Bom. L. R. 794=A.I.R. 1930 Bom. 350.

common gaming house and is liable to be punished under Section 4 of Act IV of 1887.⁸

"Persons having right to the use of," meaning of.—Where instruments of gaming are found in a passage on the ground floor used by the accused as a means of passage to his rooms on the second floor, the accused cannot be said to have a right to the use of the passage within the meaning of Section 4 (a), in the absence of evidence that the landlord or his agent knew the purposes for which the passage was being used or that the accused had any right to use it except as a means of passage and under such circumstances the conviction of the accused under Section 4 (v) is not permissible.⁹

When conviction sustainable.—A conviction under Section 4 will be sustained only if it be shown that the house in which the accused were found was a common gaming house.¹⁰

Conviction under Section 4.—A conviction under Section 4 is sustainable only if it is shown that the house in which the accused were found was a common gaming house.¹¹

"Place"—meaning of.—The word 'place' in Section 4 has a wide meaning and its application is not excluded by Section 12 in proper cases even though the latter section might apply to the same 'place'. Hence a shop abutting on a public street, though a 'place' under Section 12, is a place under Section 4, and a search warrant under the Act can be issued, and presumption under Section 7 can be drawn against the keeper of such a shop for the purpose of gaming for profit, and he can be convicted under Section 4.¹²

The term 'place' as used in Section 4 of the Bombay Prevention of Gambling Act, includes a small open space surrounded by houses on all sides, accessible by a narrow lane having a signboard pointing to the space, and appropriated to business of betting.¹³

Finding of marked coins and slips of paper with figures.—The mere fact of finding of marked coins and slips of papers with figures on it in the room of house of the accused would not be sufficient to justify his conviction under Sections 4 (a) and 5 of the Bombay Prevention of Gambling Act, unless the evidence made it perfectly clear that these articles were instruments of gaming.¹⁴

Specific evidence in doubtful circumstances.—There is no doubt a presumption arises from the use of instruments of gambling like cards that gambling has taken place, yet where the circumstances are ambiguous,

8. *Emp. v. Chaganlal Jiwraj*, 6 Bom. L. R. 249 (26 B. 553=4 Bom. L. R. 287=5 Bom. L. R. 129, R.) (R. 29 B. 264=6 Bom. L. R. 1091).

9. *Ibrahim Haji Abdul Rahiman v. Emp.* I L. R. (1940) Bom. 322=A. I. R. 1940 Bom. 129=41 Cr. L. J. 571=42 Bom. L. R. 161=188 I. C. 316.

10. *Emp. v. Mulchand*, 4 Bom. L. R. 946.

11. 5 Bom. L. R. 1047.

12. *Satnarain Amrat Lal v. Emp.* I. L. R. (1939) Kar. 741=183 I. C. 562=12 R. S. 60=40 Cr. L. J. 817=A. I. R. 1939 Sind 184.

13. *Emp. v. Fattu Mahomed Sher Mahomed* 15 Bom. L. R. 68=20 Ind. Cas. 609=37 Bom. 651.

14. *Emp. v. De, Souza*. 41 Bom. L. R. 974=A. I. R. 1939 Bom. 465.

it is more desirable that there should be some evidence that game actually being played at the moment was not a game of skill but of chance and that in view of the number and position and the income of players the game was one where loss might be the result not of lack of skill but of lack of luck which is the essence or the offence of gambling.¹⁵

Evidence—Admissibility.—The evidence of a stranger who recorded a bet is admissible as part of the evidence to show that the house in question is a common gaming house.¹⁶

Probability of profit to the owner is sufficient.—To prove that a particular house, room or place is a common "gaming house" it need not be established that the owner or occupier takes a fixed commission which is irrespective of the result of gaming, or that he manipulates the conditions in such a manner that he cannot possibly lose. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place i.e., where the person keeping or using the house knows that the profit or gain will in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and the expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition.¹⁷

The bogus punters are usually very unsatisfactory witnesses, but where their evidence is corroborated and gets in reasonably well with the prosecution case, the court may rely on them. But if a punter is called as a witness and does not support the prosecution, it is obviously worse than if he was not called at all.¹⁸

The fact that the players had cash in their possession does not prove that any one of them was receiving remuneration for the use of the instruments of gaming. Play goes on in many private houses and players will usually be found to have cash. But from these two things alone, it is not legitimate to draw an inference that the host is deriving profit or gain from his visitors for the use of his house and cards.¹⁹

Evidence Of Police – Corroboration.—The Court can rely on the mere statements of Police officers long after the event without any corroboration.²⁰

Failure to examine panches effect.—In a prosecution under Ss. 4 and 5 of the Bombay Prevention of Gambling Act, the failure to examine the panches in whose presence a pauchnama was made at the raid or search,

15. *Tillockchand v. Emp.* 20 S.L.R. 66=26 Cr. L.J. 1356=89 I. C. 396=1926 A.I.R. Sind 65.

16. *Emp. v. Alasbhai* 1926 Bomp. 105=50 Bom. 344=28 Bom. L.R. 272=27 Cr. L. J. 503=93 I.C. 967.

17. *Emp. v. Dattaraya Shakar Falianpe* 47 B. 960=25 Bom. L. R. 1089=1924 Bom. 184.

18. *Desouza v. Emp.* 1939 Bom. 465=41 Cr. L. J. 127=185 I. C. 203=41 Bom L. R. 974.

19. *Emp. v. Asiat* 1935 Sind 102=156 I. C. 294=36 Cr. L. J. 932=29 S. L. R. 19.

20. *De Souza v. Emp.* 1939 Bom. 465=41 Bom L. R. 974=41 Cr. L. J. 127 ¶ 185 I. C. 203.

and to produce independent evidence as to what was found at the raid is a serious omission and a vital defect.²¹

Corroboration of evidence of police agent necessary.—A charge of gambling, like any other criminal charge, must be proved by the prosecution by proper evidence. The evidence of the police agent in these cases must always be corroborated before it can be acted upon. Nor is the case improved by providing the police agent with a companion and calling him a panch.²²

If instruments of gaming are found which are not introduced by the bogus punter himself like marked coins, that is very good independent corroboration of the punter's evidence that the marked coin was also an instrument of gaming.²³

Irregularity in arrest—Effect.—Where a warrant is in the name of a sub-Inspector and he is present near the room used for gambling purposes but the accused is actually arrested by his constable who had already entered the room, the irregularity is not such as would vitiate the proceedings.²⁴

Sentence.—It cannot be held that lack of means on the part of the accused is not a special reason justifying the imposition of the less than the maximum fine under the proviso to S. 4 (a) of the Bombay Prevention of Gambling Act. The device of a fine as a means of punishment is that its severity necessarily depends on the financial position of the accused. The court has discretion to impose a sentence of imprisonment or fine; and where the accused is shown to be gambling on large scale, and may be presumed to be making a good deal of money out of it, it may be that the only punishment, likely really to act as deterrent, would be imprisonment. *Prima facie*, however, it is undesirable to impose a sentence of imprisonment for a first offence.²⁵

Imprisonment in default of payment of fine.—In awarding imprisonment in default of payment of fine under S. 4 and 5 of Bom. Act IV of 1887, the Court should keep in view the provisions of S. 65, I. P. C.²⁶

Sentence—inability to pay fine.—It is within the meaning of the proviso of the clause relating to the imposition of punishments for offences under S. 4 for the court to put on record as a special reason for the imposition of lesser fine, the inability of the accused to pay it.²⁷

Where the prosecution has relied upon the same facts and upon the same acts of the accused to prove that the offences under S. 4

21. *Emp. v. Desouza* 41 Bom. L. R. 974=A. I. R. 1939. Bom. 465.

22. *Emp. v. Harilal Gordhan*=I. L. R. 1937 Bom. 670=171 I. C. 282=38 Cr. L. J. 1047=39 Bom. L. R. 613=A. I. R. 1937 Bom. 385.

23. *Krishnaji Madhusudan*, 41 Bom. L. R. 1114=41 Cr. L. J. 273=1940 Bom. 18=186 I. C. 242.

24. *De' Souza v. Emp.* 1939 Bom. 465=41 Bom. L. R. 974=41 Cr. L. J. 127=185 I. C. 203.

25. *Emperor v. Karsandas Nanji* 201 I. C. 503=15 R. B. 107=43 Cr. L. J. 759=41 Bom. L. R. 443=A. I. R. 1942 Bom. 206 (2).

26. *Queen Empress v. Venkata bin Timanna*, 2 Bom. L. R. 1081.

27. *Narai Devji* 1940 Sind 187=180 I. C. 703=41 Cr. L. J. 959.

and 5 were committed, the accused may be convicted under both the sections but there should be only one punishment for both.²⁸

Previous conviction.—In a trial for the offence of keeping a common gaming house under S. 4 of the Act evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention.²⁹

Enhanced punishment.—In S. 4 there is no enumeration of four distinct offences but a definition of one offence i. e., keeping common gaming house by reference to four varieties of it. The term 'offence' in the section means an offence under any clause of the definition and a person who is convicted under any of the clauses is liable to enhanced punishment provided in the penal clauses if he has been previously convicted of an offence or offences under any other clause of the definition.³⁰

Cognisability of offence under S. 4 or S. 5.—An offence under S. 4 or S. 5 is cognizable under S. 4 (1) (f) Cr. P. C.³¹ But contrary view has been taken in a subsequent case.³²

Trial under S. 4—Cr. P. C. S. 530 (q), applicability of.—When a magistrate tries an offence under S. 4 summarily, S. 530 (q), Cr. P. C. applies.³³

Powers of High Court.—Where a conviction under S. 4 or S. 5 is wrong on the face of it, the High Court may set it aside under S. 107, Govt. of India Act, even though the accused concerned did not appeal and a revision is barred under S. 489 (5), Cr. P. C.³⁴

5. Whoever is found in any common gaming-house gaming or present for the purpose of gaming, shall, on conviction, be punishable with fine which may extend to five hundred rupees or with imprisonment which may extend to one month.

Any person found in any common gaming-house during any gaming therein shall be presumed, until the contrary is proved, to have been there for the purpose of gaming.

Applicability and Scope—A prosecution under S. 5 need not necessarily be preceded by a search under S. 6. A prosecution under S. 4

28. *Bhagwandas v. Emp.* I. L. R. (1940) Kar. 150=1940 Sind 28=187 I. C. 78.

29. *Emperor v. Alloomiya* 5 Bom. L. R. 805=28 B. 129.

30. *Emp. v. Appa Ganpat* 1935 B 393=37 Bom. L. R. 656=159 I. C. 176 37 Cr. L. J. 43.

31. *Emp. v. Abasbhai* 50 B 344=27 Cr. L. J. 503=93 I. C. 967=1935 Bom. 195=28 Bom. L. R. 272.

32. *Raghunath v. Emp.* 1932 Bom. 610=34 Bom. L. R. 901=139 I. C. 281=33 Cr. L. J. 733.

33. *Emp. v. Mehanand* I. L. R. (1940) Kar. 123=1939 Sind 341=41 Cr. L. J. 190=185 I. C. 543.

34. *Emp. v. Jamna Das* I. L. R. (1937) Bom. 263=39 Bom. L. R. 82=1937 Bom. 153=38 Cr. L. J. 606=163 I. C. 713.

or S. 5 might be launched on evidence quite independent of police evidence, *e.g.*, evidence of a neighbour and it is not possible to read as laying down a condition precedent to launching a prosecution under S. 4 or S. 5.¹

S. 5 of Bom. Act IV of 1887 refers to persons found in a common gaming house; it does not refer to persons who are in the habit of assembling in various places for the sole purpose of gambling.²

The reasons underlying the presumption in S. 5 of the Act does not apply to cases under S. 12. An actual taking part in gambling must be proved for a conviction under S. 12.³

Agreement to bet irrespective of adjournment of race.—Evidence in a case showed that the race which was to be run on 29th September was adjourned to 6th October early in the morning and still in the afternoon of that day bets were entered into with regard to the meeting which had already been adjourned, and the bets were to remain good for the race that was to be run on 6th October. The accused did not intend either that the race should run on 29th September or that a particular horse should run that day, as the condition of the agreement.

Held, that even though the race was postponed, the agreement to bet would be a wager and would amount to an offence under S. 5.⁴

Found in common gaming house.—When a police-officer armed with a warrant sees a person come out of a house, and he is arrested as he comes out, he is found in the house. "Found in the house" does not mean "arrested in the house".⁵

Gaming etc.—Where in a certain game, certain operations are to be performed to enable the gamester to play the game, the persons taking part in such operations must be deemed to be "gaming" within the provisions of the Act as they actually assist in the gaming.⁶

Offence cognizable within Cr. P. Code.—As under S. 6 certain officers have power to issue warrants of search and also of arrest, and to cause search or arrest without warrant personally, the offence under S. 4 or 5 of Bombay Act IV of 1887 is a cognizable offence under S. 4 (1) (f), Cr. P. Code.⁷

1. *Emp. v. Shankar* 1935 B. 39=36 Cr. L. J. 543=154 I. C. 634=36 Bom. L. R. 1113.
2. *Queen Empress v. Shekh Ahmedbahi*, Rat. Un. Cr. C. 763=Cr. Rg. 25 of 1895.
3. *Hira Lal v. Moti Lal* 15 Bom. L. R. 331=20 I. C. 143=14 Cr. L. J. 333.
4. *Emp. v. Ismail Hirji*, 31 Bom. L. R. 1949=1931 L. Cr. C. 113=54 Bom. 146=31 Cr. L. J. 633=A. I. R. 1930 Bom. 49.
5. *Tri. howan Moti Ram v. Emp.* 53 Bom. 137=117 I. C. 434=31 Bom. L. R. 53=30 Cr. L. J. 794=A. I. R. 1920 Bom. 74 (8 B. H. C. R. I.=22 P. R. 1895 relied on.)
6. *Mohammad Hassan v. Emp.* 31 S. L. R. 44=169 I. C. 35=38 Cr. L. J. 668=9 R. S. 255=A. I. R. 1937 Sind 99.
7. *Emp. v. Abasbhai*, 50 Bom. 344=28 Bom. L. R. 272=27 Cr. L. J. 503=93 I. C. 967=A. I. R. 1926 Bom. 195.

But the Sind Chief Court has held the contrary, that it is not cognizable. The special provisions of the Bombay Prevention of Gambling Act are designed to exclude the general powers of arrest generally to be exercised by police officers. It is a special power of arrest to be exercised in special circumstances subject to certain condition precedent under special authorities by police officers and Magistrates. In such circumstances offences under the Act are not cognizable under S. 4 (1) (f), Criminal Procedure Code. The special provision at the end of Sch. II, Criminal Procedure, supports this view. Therefore, an offence under S. 5, Bom. Prevention of Gambling Act, is not a cognizable offence.*

Illegal arrest—Effect.—When a police officer, knowing that a warrant under S. 6 was a condition precedent to an arrest for an offence under S. 5, arrests and detains a person without such warrant he cannot take shelter under S. 8 of the District Police Act.*

*“ 6. It shall be lawful for a Police officer—

Entry, search,
etc., by police-
officers in
gaming house.

(i) in [a] ‘the Greater Bombay’ not below the rank of a Sergeant or Sub-Inspector and either empowered by general order in writing or authorized in each case by special warrant issued by the Commissioner of Police, and

(ii) elsewhere not below the rank of a Sub-Inspector of Police authorized by special warrant issued in each case by a Magistrate of the First Class or a District Superintendent of Police or by an Assistant or Deputy Superintendent of Police specially empowered by the Provincial Government in this behalf,—

(a) to enter, with the assistance of such persons as may be found necessary, any house, room or place which he has reason to suspect is used as a common gaming house,

(b) to search all parts of the house, room or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein, such persons whether are then actually gaming or not,

(c) to take into custody and bring before a Magistrate all such persons,

8. Mahmood Khan Daulat Khan v. Emp. I. L. R. 1942 Kar. 94=A I. R. 1942 Sind 106=43 Cr. L. J. 888.

9. Mahmood Khan Daulat Khan v. Emp. I. L. R. 1942 Kar. 91=1942 Sind 106=43 Cr. L. J. 888=202 I. C. 681.

*This section was substituted for the original section by Bom. Act I of 1939, s. 5.

(d) to seize all things which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein :

Provided that no officer shall be authorized by special warrant unless the Commissioner of Police, the Magistrate, the District or Assistant or Deputy Superintendent of Police concerned is satisfied; upon any complaint made before him on oath and upon making such inquiry as he may think necessary that there are good grounds to suspect the said house, room or place to be used as a common gaming-house. "

Construction.—The powers given under S. 6 are very wide and are apt seriously to interfere with the liberty and property of the subject, the section therefore should be strictly construed and the conditions required for its coming into operation should be strictly complied with.¹

S. 6 of the Act must be construed strictly, because S. 7 gives to the arrest and seizure under it an operation different from that of general presumption of innocence in criminal cases.²

Search Warrants—Essentials of Validity.—It is not essential that a search under S. 6 should conform to the provisions of S. 103, Cr. P. C.³

Applicability of S. 103, Cr. P. C. to search.—A search made by police officers without Mashirs is illegal under S. 103, Cr. P. C. but not under S. 6 of Bombay Prevention of Gambling Act.⁴

Applicability of Cr. P. C. in search.—Searches under a special or a local law need not be conducted in accordance with the Cr. P. Code. The absence of Mashirs at a search held under the Bombay Gambling Act, 1887, does not make the search illegal.⁵

Applicability of the provisions of Criminal P. C.—Where the Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal P. C. must give way. Accordingly no provisions of the Code as to the authority empowered to issue a warrant for arrest or search or the persons to whom and the conditions under which such warrant may be issued, can apply for the purposes of S. 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in S. 6 of the Act and no other. But the special provisions in S. 6 of the Bombay Act would still be subject to the general provisions of Ss. 65 and 105 of the Code.⁶

Though it is usually desirable that warrant issued under a particular statute should show on the face of it that the conditions precedent have been

1. *Emp. v. Thawarnal Rupchand* 31 Bom. L. R. 158=116 I. C. 251=53 Bom. 367=30 Cr. L. R. 593; 12 A. I. Cr. R. 465=A. I. R. 1923 Bom. 157.

2. *Emp. v. Kaithan Durning Ferrad*, 9 Bom. L. R. 693=6 Cr. L. J. 60=31 Bom. 430.

3. *Walvekar v. Imp.* 33 Cr. L. J. 733.

4. *Kadir Mohamed v. Emp.* 10 S. L. R. 137=39 I. C. 33=18 Cr. L. J. 49.

5. *Emp. v. Alurn*, S. S. L. R. 213=27 I. C. 910=16 Cr. L. J. 238.

6. *Emp. v. Kaithal Durning Kernad* 9 Bom. L. R. 695=6 Cr. L. J. 60=31 Bom. 438.

complied with it is not essential that it should do so. When a warrant states that a complaint on oath has been made but does not state that the person issuing the warrant had reason to suspect that the house in question was used as a common gaming house, the warrant is a valid one; if such a warrant wrongly describes the property to be searched then it is a bad warrant. But a description may be good in part and bad in part and the court may reject the bad part.⁷

Warrant issued to police officer making complaint.—There is nothing illegal if the warrant is issued to the police officer who has sworn on the complaint before the District Superintendent of Police.⁸

Endorsement of warrant to another, whether valid.—Where the officer, to whom a warrant was issued under s. 6 of the Act, endorsed it to another officer, held, that the warrant should specify the officer to whom the authority is given and that he alone can execute the warrant. A special warrant is a warrant which specially authorizes an officer to do a particular act or acts.⁹

Warrant issued to police Head Constable—Legality.—A warrant issued to a police Head Constable, appointed to hold charge of a police station, under the denomination of "Officiating Sub-Inspector," is defective; and the presumption under S. 7 cannot be drawn in such a case. The defect in the warrant vitiates the whole proceedings.¹⁰

Effect of direction to seize money.—A direction to seize money found on the persons of the people in a gaming house does not altogether vitiate the warrant under the above Act.¹¹

If warrant does not correctly specify locality.—Where a warrant, issued by the Commissioner of police under S. 6 of the Bombay Prevention of Gambling Act, contains a sufficiently accurate description of the house or room to be searched, it is not illegal merely because it does not correctly specify the locality of the house or room to be searched.¹²

Omission to mention sub-division of a house is not material.—If the description of the warrant is such that an ordinary person can identify the spot, the Crown can take advantage of the presumption created by S. 7. An omission to mention sub-division of a building is immaterial.¹³

Inaccuracy in the description in the warrant.—Where a warrant contained somewhat inaccurate description of the place to be searched but it was clear from the rest of the description contained in the warrant that the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality and attempt to find the place intended to be raided, with the help of the warrant:

7. *Vallabhai v. Emp.* 34 C. L. J. 137 (2)=1933 Bom. 79=141 I. C. 346-34 Bom. L. R. 1447.
8. *Emperor v. Nanalal Dwarka Das* 32 Bom. L. R. 79.=A. I. R. 1930 Bom. 350
9. *Crown v. Mithu*, 3 S. L. R. 56 Cr.=2 Ind. Cas. 371.
10. *Ismail Varyo v. Emperor*. 28 S. L. R. 81=152 I. C. 403=A. L. R. 1934 Sind 131=7. R. S. 95=1934 Cr. C. 106=56 Cr. L. J. 204=A. I. R. 1934 Sind 129.
11. *Bagumal Wadhmal v. Emperor* 10 S. L. R. 154=37 I. C. 54=18 Cr. L. J. 70.
12. *Emperor v. Krishna Rutna Dalvi*, 6 Bom. L. R. 52.
13. *Bhaji v. Emperor*. 20 S. L. R. 10=27 Cr. L. J. 905=96 I. C. 217=A. I. R. 1926 Sind 254.

Held that the inaccuracy did not amount to more than a misdescription and was not of a nature to vitiate the warrant :

Per Baker, J.—The absence of number of buildings would not vitiate the warrant if the buildings to be searched are otherwise sufficiently described.¹⁴

Proof of warrant.—Though it is desirable to formally produce a warrant under S. 6 still where the complainant states on oath that he searched the house under a warrant and his complaint on oath appears in the proceedings and it is not alleged that he searched the house under any other warrant or that it was not regularly issued, the irregularity may be excused.¹⁵

Formal proof of warrant sufficient.—The complaint on oath is not a necessary part of the evidence of the prosecution. Ordinarily, it would be sufficient to rely on the maxim "*Omenia rite eue acta*" after formal proof of the search warrant.¹⁶

Second warrant.—There is no express provision in S. 6 empowering the issue of a second warrant on the strength of the sworn testimony on which a prior warrant had been issued. Assuming that there is an ambiguity on that point, it must be held that a second warrant can only issue on the strength of a fresh sworn testimony.¹⁷

Special warrant.—A warrant is not a special warrant if it is not on the face of it a special warrant; and if it is not directed to a special officer, extraneous evidence cannot be admitted to prove that it was meant to be executed by a Special Police officer personally and only by him.¹⁸

Applicability of Section 98, Cr. P. C. and endorsement to another officer.—The special warrant when issued authorizes the officer or officers named therein to do all the things that are detailed in the warrant. It cannot be endorsed over to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant.¹⁹

Special warrant must be directed to person by name.—A special warrant must be a warrant which is specially directed to a person by name and not one which can be endorsed over to any other police-officer of similar rank.²⁰

Warrant comprising more than one tenement does not cease to be special.—If the houses, rooms or places have substantially been utilized for the common purpose of gambling it would not matter if the houses,

14. *Emperor v. Thavarmal Rupchand*. 31 Bom. L. R. 158=116 I. C. 251=53 Bom. 367=30 Cr. L. J. 595=12 A. I. Cr. R. 466=A. I. R. 1929 Bom. 157. (1926 Bom. 195 Dist.)

15. *Abdullah v. Emperor* 5 S. L. R. 40=9 I. C. 895=12 Cr. L. J. 149.

16. *Atdullah v. Emperor* 9 I. C. 895=12 Cr. L. J. 149=5 S. L. R. ?

17. *Emp. v. Asiat* 1945 Sind 102=156 I. C. 294=36 Cr. L. J. 902=29 S. L. R. 19.

18. *Assudomal v. Emperor* 1930 Cr. C. 123=A. I. R. 1931 Sind 59.

19. *Emperor v. Thavarmal Rupchand*. 31 Bom. L. R. 153=53 Bom. 367=116 I. C. 251=30 Cr. L. J. 55=12 A. I. Cr. R. 466=A. I. R. 1929 Bom. 157.

20. *Assudomal v. Emperor*. 30 Cr. L. J. 1075=119 I. C. 535=23 S. L. R. 441=A. I. R. 1930 Sind 59.

rooms or places comprised more than one tenement. The fact therefore that the warrant comprised more than one tenement would not make it a general warrant. The term "special warrant" has reference only to the limitation as regard the person or persons who would be competent to execute it.²¹

Commissioner of Police.—The Commissioner of Police can himself do that which under Section 6 he can authorise a subordinate officer to do.²²

Commissioner Of Police in Bombay City may search and Arrest without Warrant.—The Commissioner of Police in the city of Bombay is entitled to make a search in a common gaming house and to arrest the persons found therein even in the absence of a warrant under S. 6 of the Act.²³

Deputy Superintendent of Police.—The wording of S. 6 (2) of the Bombay Prevention of Gambling Act requires that when a Deputy Superintendent of Police is especially empowered by Government under this Sub-section he should be specially empowered by name.²⁴

District Superintendent of Police.—S. 6, Gambling Act, confers the power *inter alia* on the District Superintendent of Police to receive a complaint on oath in cases contemplated by the section and such a power necessarily implies that the District Superintendent of Police is competent in cases contemplated by S. 6 to administer an oath to the person making the complaint before him.²⁵

Additional Distt. Superintendent of Police—The words "specially empowered by Govt. in this behalf" in S. 6 only cover the Asstt. or Deputy Supdt. of Police. So that a magistrate of first class or a District Superintendent of Police can exercise the power without any special authority from Govt. But there is nothing said about the Addl. District Superintendent of Police and hence he has no power to authorise the issue of a search warrant under S. 6. A conviction on the basis of such a warrant is unsustainable.²⁶

Honorary Magistrate can issue warrant.—Whatever the powers of the Honorary Magistrate may be under the Cr. Procedure Code, there is nothing in the Bombay Gambling Act which requires that a Magistrate issuing a warrant there under should be vested with any special jurisdiction. All that is required is that there should be a warrant by a First Class Magis-

21. *Emperor v. Thavarimal Rhupchand*. 53 Bom. 367=31 Bom. L. R. 158=116 I. C. 251=30 Cr. L. R. 595=12 A. I. Cr. R. 466=A. I. R. 1929 Bom. 157.

22. *Emp. v. Jaffar Mohamed* 37 B. 402=15 Bom. L. R. 106=14 Cr. L. J. 204=19 I. C. 204.

23. *Emperor v. Jaffar Mahommed* 15 Bom. L. R. 106=2 Bom. Cr. C. 29=14 Cr. L. J. 204=19 Ind. Cas 204=37 B. 402.

24. *Emperor v. Udho*. I. L. R. (1943) Kar. 20=206 I. C. 331=15 R. S. 178=44 Cr. L. J. 502=A. I. R. 1943 Sind 107.

25. *Tribhawan Moti Ram v. Emperor*. 53 Bom. 137=31 Bom L. R. 53=30 Cr. L. J. 794=117 I. C. 434=A. I. R. 1929 Bom. 74.

26. *Asgaralli v. Emp.* 1940 Bom. 127=187 I. C. 450=41 Cr. L. J. 485=42 Bom L. R. 203.

trate and therefore an Honorary First Class Magistrate is entitled to issue a search warrant.²⁷

Where a magistrate first class himself makes an arrest and seizure under S. 6 of the Act, he must himself enter the "house, room or place", with, ofcourse, the assistance of such persons as may be found necessary.²⁸

Powers of a Magistrate first class.—Under S. 6 of the Act a first class Magistrate has power to give authority under a special warrant to a Police officer of the class designated in the section, to make the arrest and the search, the legislature must be presumed to have intended that the Magistrate first class should have the authority to make the arrest and the search himself if necessary.²⁹

Grounds for suspicion.—The reason for suspicion which is referred to in clause (a) of S. 6 must obviously include information given by a police informant, for in many cases it is only from such information that the Police can act at all; and so far as the seizure of all things reasonably suspected to have been used or intended for the purposes of gaming under clause (c) is concerned, it cannot be expected that the Police officer must wait for a translation or interpretation of a writing, otherwise unintelligible to him found upon slips of paper on the person of the suspected man. He must judge and be judged by all surrounding circumstances and the information he then possessed.³⁰

Whether informant should have personal knowledge.—This section does not require that the informant should have personal knowledge, it is sufficient if the informant testifies to a reasonable suspicion that any house, room or place is used as a common gaming house.³¹

Complaint on oath may be oral or in writing.—The complaint on oath referred to in S. 6 does not appear necessarily to be a complaint in writing on the filing of which process is to issue as in ordinary criminal trials. It may be either oral or in writing. It is not necessary that it should be recited in the warrant or set out in any complaint that may be subsequently filed before the Magistrate. The fact that the warrant has been issued would raise a presumption that *omnia rite esse acta*.³²

Complaint.—Section 6 does not impose any limitation on the power of any person to make a complaint on oath to the Commissioner of Police.

27. *Tillockchand v. Emperor*. 20. S. L. R. 66=26 Cr. L. J. 1356=89 I. C. 396=A. 1 R. 1925 Sind 65.

28. *Emperor v. Kaithan Duming Ferrad*, 9 Bom. L. R. 695=6 Cr. L. J. 60=31 Bom. 438.

29. *Emperor v. Kaitan Duming Fernad* 9 Bom. L. R. 695=6 Cr. L. J. 60=31 Bom. 438.

Ibid.

30. *Emp. v. Ali Mohd.* 1938 Sind 228=I. L. R. (1939) Kar 217=40 Cr. L. J. 271=179 I. C. 794.

31. *Emperor v. Hirod Bhojraj I.* S. L. R. Cr. 74=8 Cr. L. J. 182.

32. *Tribhawan Motiram v. Emp.* 53 Bom. 137=81 Bom. L. R. 53=117 I. C. 434=30 Cr. L. J. 794=A. I. R. 1929 Bom. 74.

As a general rule, any person having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence.³³

Complaint by Police Officer—S. 6 is wide enough to include a complaint on oath made by a police-officer.³⁴

Evidence of Magistrate personally making the arrest and search—The first condition necessary to make arrest and seizure under the section legal, so as to bring into operation of S. 7, is that, where the Magistrate is acting on information, there must be a complaint made before him on oath to set him in motion. When a Magistrate first class or other officer mentioned in S. 6 himself does the act specified in Cl. 3 of the section instead of issuing a special warrant, he must give evidence, because he supplied the place of the warrant and the warrant is necessary part of the evidence for the prosecution.³⁵

Arrest by Commissioner of Police—Under S. 6 the Commissioner of Police can arrest without warrant.³⁶

Arrest by Police officers.—A police officer cannot arrest a person, under the Act, unless he holds a warrant under S. 6 of the Act.³⁷

Search by Police officer.—A police officer of a lower rank than a Chief Constable cannot, under S. 6 of Bombay Act IV of 1887, enter a house with a search warrant.³⁸

Arrest by police-officer in the presence though not within view of the Commissioner of Police.—Where the arrests by a police-officer are under the express authority of the Commissioner of Police and in the presence of the Commissioner, though not within his view, the arrests by the police officer are not illegal.³⁹

The Commissioner of Police in the city of Bombay is entitled to make a search in a common gaming house and arrest the persons found therein even in the absence of a warrant under S. 6 of the Act.⁴⁰

Inquiry by Magistrate—Issue of warrant.—S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate before issuing a warrant, to make inquiry after receiving information. This section only enjoins the Magistrate to make such enquiry as he may think necessary, and the words do not mean that he is to make an enquiry, even though he may not think it necessary to do so.

33. *Emperor v. Ismail Hirji*, 31 Bom L. R. 149—1930 Cr. C. 113=44 Bom. 146=31 Cr. L. J. 633=A. I. R. 1930 Bom. 49.

34. *Im. v. Nanalal Dvarka Das*, 32 Bom L. R. 794—A. I. R. 1930 Bom. 550.

35. *Imp. v. Kaithlan Dumtug Fernad* 9 Bom L. R. 695=6 Cr. L. J. 60—31 Bom. 438.

36. *Imp. v. Ismail Hirji*, 31 Bom L. R. 1349=1931 Cr. C. 113=54 Bom. 146=31 Cr. L. J. 633=A. I. R. 1930 Bom. 49.

37. *Emp. v. Mulchand*, 4 Bom L. R. 946.

38. *Queen Empress v. Subbabbhatta*, Rat Un. Cr. C. 825—Cr. Rg. 68 of 1875.

39. *Imp. v. Ismail Hirji*, 31 Bom L. R. 1349=1930 Cr. C. 1123=54 Bom. 146=51 Cr. L. J. 633—A. I. R. 1930 Bom. 59.

40. *Emp. v. Jaffar Mahommed* 15 Bom L. R. 106=2 Bom. Cr. C. 29=14 Cr. L. J. 204=19 Ind. Cas. 204=37 B. 402.

This section does not require that informant should have knowledge; it is sufficient if the informant testifies to a reasonable suspicion that any house, room or place is used as a common gaming house. On the conviction of the accused, the Magistrate cannot order the money on their person to be confiscated.⁴¹

Magistrate, power to examine prisoner.—A Magistrate has power to examine as witnesses persons arrested and brought before him under S. 6 (b) of the Act. The special procedure of the Gambling Act overrides the general law of procedure in S. 352, Cr. P. C. whenever it is inconsistent with it.⁴²

“7. *When any instrument of gaming has been seized
 Presumptive proof of keeping or gaming in common gaming-house. **in any house, room or place entered under section 6 or about the person of any one found therein, and in the case of any other thing so seized if the court is satisfied that the Police officer who entered such house, room or place had reasonable grounds for suspecting that the thing so seized was an instrument of gaming, the seizure of such instrument or thing shall be evidence, until the contrary is proved, that such house, room or place is used as a common gaming-house and the persons found therein were then present for the purpose of gaming, although no gaming was actually seen by the Magistrate or the Police officer or by any person acting under the authority of either of them.”**

Construction.—Bombay Act IV of 1887 must be strictly construed, as S. 7 departs from the ordinary rules of evidence and places the burden of proof on the accused.¹

“Found” meaning of.—There is no justification for restricting the meaning of the word ‘found’. When the accused is arrested in a house near a common gaming house where he had taken shelter, he must be deemed to have been found in the common gaming house.²

Persons.—The word “persons” includes “person” as the plural includes the singular.³

Presumption under S. 7 when arises.—A presumption under S. 7 can arise only if the house has been entered under the warrant issued under

41. *Imperator a. Hiro Wd. Bhojraj* 1 S. L. R. Cr. 64=8 Cr. L. J. 183 (26 B. 641, F.)

42. *Liladhar Umersi v. Emp.* 8 S. L. R. 309=29 I. C. 79=16 Cr. L. J. 447.

Section 7

1. *Queen Emp. v. Sobhabhatta*, Rat. Un. Cr. C. 325-Cr. Rg. 68 of 1895.

2. *Emp v. Shankar* 36 Bom. L. R. 1113=1935 Bom. 39=36 Cr. L. J. 543=154 I. C. 634.

3. *Bhagwandas Ghanashamdas A. L. R.* (1940) Kar 150=1940 Sind 28=41 Cr. L. J. 309=187 I. C. 78.

*This section was substituted for the original section by Bombay Act I of 1986, s. 6.

the provisions of S. 6 and in the absence of strict compliance with S. 6 the warrant cannot be said to have been duly issued.⁴

Where a house is searched on the authority of a warrant duly issued under S. 6 of the Bombay Prevention of Gambling Act, and gambling is found going on in the house and instruments of gaming are also found therein, the presumption under S. 7 of the Act that there was a common gaming house arises and this dispenses with the necessity of direct evidence that the gambling is carried on for the profit of the keeper of the house. Even the purpose of the occupier of the house, e. g., the purpose of profit or gain, is to be presumed under S. 7, and once that presumption is attracted, it is for the accused to rebut it.⁵

Validity of warrant disputed.—Before any presumption of guilt can be drawn against the accused under S. 7 of the Gambling Act, it is incumbent on the trying Magistrate to be satisfied that the warrant issued by the police officer under S. 6 of the Act was a valid one and where the Magistrate had merely referred to an uncertified copy of the statement made by the informer, without calling for further proof, held, that he had no sufficient materials to hold that the warrant was a valid one.⁶

No presumption under S. 7 can be drawn where the warrant is not a special warrant issued under S. 6 of the Act.⁷

There are two events on which the presumption under S. 7 of the Prevention of Bombay Gambling Act arises. As to the first event, namely, the seizing of any instrument of gaming, all that the court has to do is to see whether the documents or things found in the house raided fall within the definition of "instruments of gaming". If they do, the presumption arises. The other event is more difficult to determine. There are two things required to prove the occurrence of the event, first, that something has been seized which is other than an instrument of gaming, and, secondly, that the police officer had reasonable grounds for suspecting that the thing so seized was an instrument of gaming. When these two things are proved then the court must presume that the house which has been entered was used as a gaming house until the contrary is proved. But if the only evidence of the house being used as a common gaming house lies in the seizure in the house of something which is in fact not an instrument of gaming, although the police-officer had reasonable grounds for suspecting that it was an instrument of gaming, then there is no evidence of such user, and the presumption is rebutted. The presumption arising in the second event specified in S. 7 must always be stillborn, because it is rebutted by proof of the very event which gives it birth, namely seizure of something other than an instrument of gaming. The section must be construed strictly, and the second event can only arise, on the language of the section, when it is proved that the thing which was found in the house raided was not an instrument of gaming and directly one proves it, one destroys the eventual value of the thing found.⁸

4. *Emp. v. Asiat* 1935 Sind=29. S. L. R. 19=156 I. C. 294.=36 Cr. L. J. 902.

5. *Emperor v. Chimanlal Sankal Chand* 47 Bom. L. R. 75=A. I. R. 1945 Bom. 305=47 Cr. L. J. 109=221 I. C. 18.

6. *Crown v. Seju walad Chatu*, 9 Cr. L. J. 267=1 S. L. R. 27, Cr.

7. *Asandomal v. Emperor* 30 Cr. L. J. 1075=119 I. C. 535=23 S. L. R. 441=1930 Cr. C. 123=A. I. R. 1930 Sind. 59.

8. *Emperor v. Nathalal Vammali*, I. L. R. (1939) Bom. 434=184 I. C. 252=40 Cr. L. J. 891=12 R. B. 155=41 Bom. L. R. 548=A. I. R. 1939 Bom. 339.

The presumption under S. 7 of the Bombay Gambling Act will only arise when the warrant has been duly issued without any defect.⁹

The mere assertion of the Police Inspector that information was given on oath to the Magistrate granting the warrant was not sufficient material for the trying Magistrate to come to the conclusion that the warrant was properly issued under S. 6 and to apply the provisions of S. 7 to the case. The mere finding of the instruments of gambling in the house entered under the warrant is not proof that it was used as a common gaming house.¹⁰

A shop abutting on to a public street although a place within the meaning of S. 12 is also a place within the contemplation of S. 4 and a search warrant under that section can be issued and a presumption under S. 7 can be drawn against the shop-keeper.¹¹

If the description of the house is such that an ordinary person can identify the spot, the crown can take advantage of presumption under S. 7 and the omission to mention the subdivision of a building is immaterial.¹²

Where 13 persons were found in a room in the upper storey of a house, sitting in a circle gambling with dice, and having a quantity of cowries and money before them, held that the above facts would be evidence under s. 7 of Bombay Act IV of 1837, until the contrary was proved, that the room was used as a common gaming house and that the persons found therein were then present for purpose of gaming.¹³

Rebuttal of presumption.—The presumption arising under s. 7 from the finding of the instruments of gaming from a place is that the place was used as a common gaming house and that the persons found there were there for the purpose of gaming and then the burden is thrown on the accused to show that the place was not a common gaming house. If he fails to discharge that burden, his conviction under s. 5 will be justified.¹⁴

Where it was found that a certain number of Hindus were gambling in a house on a satam day on which according to the local custom Hindus used to gamble and that no non-Hindus were admitted to the premises ;

Held that the presumption under s. 7 of the Act was sufficiently rebutted by the fact that it was the satam day on which the gambling was going on.¹⁵

Where the conviction was based upon the fact that instruments of gaming were found on the premises, held, that the presumption under

9. *Ismail Varyo v. Emperor*, 28 S. L. R. 81=A. R. 1924. Sind 131=152 I. C. 400=7 R. S. 95=1931 Cr. C. 1085=36 Cr. L. J. 204=A. I. R. 1934 Sind 129.

10. *King Emperor v. Aadir*, 3 S. L. R. 78=3 Ind. Cas. 893.

11. *Sabharam Amratlal v. Emp.* I. L. R. (1939) Sind 181=40 Cr. L. J. 817=183 I. C. 662.

12. *Bhanji v. Emperor* 96 I. C. 217=20 S. L. R. 10=1926 Sind 254=27 Cr. L. J. 905.

13. *Queen Emp. V. Bai Vaju*, 22 B. 745.

14. *Ghulam Hussain v. Emp.* I. L. R. (1940) Bomb. 105=41 C. L. J. 253=41 Bom. L. R. 1336=186 I. C. 148.

15. *Pabumal v. Emp.* 27 S. L. R. 32=1. R. 1933 Sind 102 (2)=142 I. C. 522 (1)=Cr. L. J. 356=1933 Cr. C. 188=A. I. R. 1933 Sind 42.

s. 7 was rebuttable, and was rebutted in this case by the fact that the warrant for search was issued, on the sworn information of an avowed gambler, that the accused all belonged to the same caste, and were, at the time of search, preparing tea, that cricketing things were found, as well as a money box with a little cash, and that the accused alleged that the premises were used by them as a club.¹⁶

Presumption under a. 7—rebuttal.—The accused a medical practitioner was charged with keeping a common gaming house and thereby committing an offence under s. 4 (a). He was convicted on the evidence that on a police raid of his dispensary some slips of papers with names of horses with sums of money marked against some of them were found. The betting books of any sort were not found.

Held that if a presumption arose under s. 7, it was rebutted by the fact that nothing was found in the house to suggest that it was being used as a common gaming house.¹⁷

Where a search warrant has been issued under the provisions of s. 7, it is for the accused to prove that the house was not a common gaming house and that the articles found therein were not there for the purpose of gaming.¹⁸

The fact that the accused occupied the house temporarily when they were out for a picnic and were playing there for a small stake is sufficient to rebut the presumption arising under s. 7 that the house was a common gaming house.¹⁹

Under section 7 of the Prevention of Gambling Act a presumption arises when instruments of gaming are found in a place that it is a common gaming house. But if the circumstances show that the only person who can make a profit from the gaming is not the owner, occupier, or person using or having the use of the same within the meaning of Ss. 3 and 4 of the Act, the presumption must be rebutted and no conviction would be possible under S. 4 or S. 5.²⁰

Failure to rebut presumption—Conviction.—When the prosecution successfully establishes facts necessary to raise the presumption. Under S. 7, they need not prove anything further and it is then for the accused to show that the place was not a common gaming house and if he fails to rebut the presumption his conviction under S. 5. will be justified.

Presumption when does not arise.—A bagatelle board and billiard balls are capable of being used both for games of skill and games of chance, and no presumption can be drawn under S. 7 of the Prevention of Gambling Act.²¹

16. Tyab Ali Mohamud Ali v. Crown. 3 S. L. R. 80.

17. Rustam Cursetji Law v. Emp. 1932 Bom. 181=34 Bom. L. R. 267=33 Cr. L. J. 389=136 I. C. 868.

18. King Emp. v. Ahmed Ahji, 4 Bom. L. R. 297.

19. Chimmam Lal v. Emp. 19 Bom. L. R. 623=41 I. C. 997=18 Cr. L. J. 885.

20. Emp. v. Krishnji Madhusudan 41 Bom. L. R. 1114.=1940 Bom. 18=41 Cr. L. J. 273=186 I. C. 242.

21. Ibrahim Haji Abdul Rehman v. Emp. I. L. R. 1940 B 322=1940 B 129=42 Bom. L. R. 161=188 I. C. 316=41 Cr. L. J. 571

22. Queen Empress v. Masukh Raichand, Rat. U. Cr. C. 923=Cr. Rg., 28 of 1897.

If the warrant under which a search is made, is bad then the presumption under S. 7 of the Act cannot be made, but the mere fact that such presumption cannot be raised, does not prevent the prosecution from establishing by evidence in the ordinary way that on the facts proved the accused were guilty of the offences charged.²³

A Magistrate issued a warrant under the Act to a Mukhtiarkar to arrest the appellant. Held, that as the warrant was not issued to a police officer, no presumption under S. 7 of the Gambling Act arises, and that the prosecution must prove that the house in question was a common gaming house.²⁴

The mere finding of a marked coin does not give rise to any presumption under S. 7 of the Bombay Prevention of Gambling Act.²⁵

Presumption when arises.—The presumption under S. 7 of the Act only arises where there has been an arrest and search under S. 6 of the Act.²⁶

S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate, to make, before issuing a warrant, a further inquiry after a complaint was made to him if he thinks it not necessary to do so. The presumption under S. 7 will not arise, unless it is shown that the warrant was issued under the provisions of S. 6 and, therefore, in every case it is necessary that the Magistrate should exhibit and bring on the record the complaint on oath and warrant. The motives of the informant of an offence under the Bombay Gambling Act are altogether irrelevant, and S. 11 of the Act shows that the Legislature recognised that the informant might be actuated only by the hope of reward.²⁷

Money found in pocket—Seizure.—It was not the intention of the legislature that money should be forfeited when there is no reason to believe that these monies were connected with the gaming. When the moneys seized were found in the coat pocket of the accused it cannot be said in the absence of any satisfactory explanation by him, that these moneys were not connected with the gaming and were not rightly seized.²⁸

Duty of Magistrate.—Where both the complaint made under s. 6 and the warrant issued thereon are actually on the file of the

23. *Emperor v. Abasbhai* 50 Bom. 344=28 Bom. L. R. 272=27 Cr. L. J. 503=93 I. C. 967=A. I. R. 1926 Bom. 195.

24. *Crown v. Chellaram*, 2 S. L. R. 40, Cr. =10 Cr. L. J. 205.

25. *Emperor v. Krishenaji Madhusudan* 41 Bom. L. R. 114.=1940 B 18=41 Cr. L. J. 273=186 I. C. 242.

26. *Emperor v. Kaidan Duming Ferrad* 9 Bom. L. R. 695=6 Cr. L. R. 60=31 Bom. 438.

27. *Imperator v. Paman*, 1 S. L. R. 67 Cr.=8 Cr. L. J. 185 (1 S. L. R. 64 Cr. R.) (Diss. 12 Cr. L. J. 149 Ind. Cas. 895-5 S. L. R. 40.)

28. *Bhagwandas v. Emp.*, 187 I. C. 78=1940 Sind 28=41 Cr. L. J. 399=I. L. R. (1940) Kar. 150.

proceedings, if they are not formally exhibited and put on the records as evidence, the Magistrate should, in the exercise of a wise discretion, before the close of the prosecution case, draw the attention of the prosecution to the fact that the documents have not been exhibited, and ascertain whether or not they are to be regarded as having been produced as evidence for the prosecution under s. 244, Cr. P. C.²⁹

Powers of High Court.—Though it is desirable to formally produce in evidence a warrant issued under S. 6, yet where the complainant states that he searched the house and such warrant and this complaint on oath appear in the proceedings of the Magistrate, and it is not alleged that the complainant searched the house under any other warrant, or that the warrant was not regularly issued under the said section, the High Court will not exercise its discretionary powers of revision.³⁰

8. On conviction of any person for opening, keeping or using a common gaming-house, [a] * or gaming therein, or being present therein for the purpose of gaming, the convicting Magistrate may order all instruments of gaming found therein or on the persons of those who were found therein, to be forthwith destroyed [b] "or forfeited, †

On conviction for keeping or gaming in common gaming-house, instruments of gaming may be destroyed.

and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and the proceeds thereof, with all moneys seized therein, to be forfeited; or, in his discretion, may order any part of such proceeds and other moneys to be paid to any person appearing to be entitled thereto.

Scope.—Second para of s. 8 refers to S. 6 (c) and the articles liable to seizure and forfeiture are those used or intended to be used for gambling and found on the premises.¹

The power of seizing money, under s. 8 of Bombay Act IV of 1887, does not extend to that found on the persons of those who may be at the time in the gambling house.²

Forfeiture of money or ornaments.—The power of forfeiture exercisable by the magistrate under s. 8 is discretionary. It was not the

29. *Crown v. Gholam Hossein Karimbux*, 33 L. R. 81=31 Ind. Cas. 895. (Diss. 12 Cr. L. J. 149=9 Ind. Cas. 895=5 S. L. R. 40).

30. *Abdullah v. Emp.*, 9 I. C. 895=12 Cr. L. J. 149=5 S. L. R. 40. (1 S. L. R. 27=1 S. L. R. 67=3 S. L. R. 78, 3 I. C. 893=3 S. L. R. 84=3 Ind. Cas. 895, Dissented from.).

*Words repealed by Bom. VI of 1919, s. 5, are omitted.

†The words "or forfeited" were added by Bom. Act of 1936, s. 7.

Section 8

1. *Rasul Gulab Kadia v. Emperor*, 40 L. C. 311=18 Cr. L. J. 663=19 Bom. L. R. 352.

2. *Emp. v. Walli Musajju*, 26 B. 641=4 Bom. L. R. 427.

intention of Legislature that moneys should be forfeited when there is no reason to believe that these moneys were connected with the gaming.³

Forfeiture of money—When ordered.—S. 8 does not provide for forfeiture of money found on the persons of those in the common gaming house and the money found on the persons of those gaming or present in the common gaming house and so on, can be forfeited only as instruments of gaming. The definition of instruments of gaming is wide enough to cover any money or currency notes used or intended to be used as means of gaming or proceeds of gaming found on the person of one present in the common gaming house. It is, however, for the prosecution to show that any particular money to be forfeited as a means of gaming falls within the definition of instruments of gaming.⁴

A magistrate has no power under S. 8 to order forfeiture of cash, ornaments and currency notes found on the person of the accused convicted of gambling in a common gambling house.⁵

On the conviction of the accused, the magistrate cannot order the money on their person to be confiscated.⁶

9. It shall not be necessary, in order to convict a person of any offence against any of the provisions of sections 4 and 5, to prove that any person found [a]* gaming was playing for any money, wager or stake.

Proof of playing for money not required for conviction.

10. Every person who shall have been concerned in any gaming contrary to this Act, and who shall be examined as a witness by or before a Magistrate on the trial of any charge against the owner, keeper or occupier or other person having the care or management of any common gaming-house, touching such gaming and who upon such examination shall make true and faithful discovery to the best of his knowledge of all things as to which he shall be so examined, and who shall thereupon receive from the said Magistrate a certificate in writing to that effect, shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Indemnification of persons concerned who are examined as witnesses.

3. *Bahagwandas v. Emp.* I. L. R. (1949) Kar. 150=1940 Sind 28=187 I. C. 78=41 Cr. L. J. 399.

4. *Doongersi Awchar v. Emp.* I. L. R. (1940) Kar 125=1940 Sind 22=186 I. C. 883.

5. *Sadashiv v. Emp.*, 55 I. C. 864=21 Cr. L. J. 384=22 Bom. L. R. 197.

6. *Emp. v. Herod Bhojiaj.* 15 L. R. Cr. 64=8 Cr. L. J. 182 (26 B 641 followed).

*This word was substituted for the original words "playing at any game" by Bom. VI of 1919 s. 6.

Power of Magistrate to examine accused.—Under S. 10 a trying Magistrate cannot examine any of the accused persons, while he is still an accused person and has obtained no order of discharge or acquittal.¹

11. The Magistrate trying any case under the provisions of sections 4 and 5 may direct any portion, not exceeding one-fourth, of any fine which may be levied under either of the said sections, or any part of the proceeds of articles or moneys seized and ordered to be forfeited under section 8, [a] [to be sent in [1] “the Greater Bombay” to the Commissioner of Police and elsewhere to the District Superintendent of Police for distribution as reward in such manner as he may think proper, among the persons, not being Police officers, who may have given assistance in the detection or investigation of the offence [a]

Payment of
portion of fine
to informer.

Power to arrest
without warrant
for gaming and
setting birds
and animals to
fight in public
streets.

12. A Police-officer may apprehend [b] “and search [b] without warrant—

(a) any person found [d] gaming [c] “or reasonably suspected to be gaming” [c] in any public street, [c] [or thoroughfare, or in any place to which the public have or are permitted to have access] or in any race-course;

(b) any person setting any birds or animals to fight in any public street, or thoroughfare, or in any place to which the public have or are permitted to have access;

(c) any person there present aiding and abetting such public fighting of birds and animals.

Any such person shall, on conviction, be punishable with fine which may extend to three hundred rupees, or with imprisonment which may extend to three months and where such gaming consists of wagering or betting or of any such

1. Babi Lal Balwant v. Emp., 17 Bom. L. R. 1078=32 I. C. 130=17 Cr. L. J. 2.

[1] The words “the Greater Bombay” were substituted for the words “the City of Bombay” by Bom. XVII of 1945, Sch. E.

[a-a] These words were substituted for the original words by Bom. Act I of 1936, s. 9.

[b-b] These words were inserted by *ibid*, s. 9 (1).

[c-c] These words were inserted by *ibid*, s. 9 (2).

[d] This word was substituted for the original words “playing for money or other valuable thing with cards, dice, counters or other instrument of gaming used in playing any game, not being a game of mere skill” by Bom. VI of 1919, s. 7.

transaction as is referred to in the definition of gaming given in section 8, any such person so found gaming shall, on conviction, be punishable in the manner and to the extent referred to in section 4, and all moneys found with such person shall be forfeited.

Any such Police-officer may seize all birds and animals and things reasonably suspected to be instruments of gaming found in such public street, thoroughfare, place or race-course or on or about the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed, and such birds and animals to be sold and the proceeds forfeited. When any thing has been found on or about any person and a court is satisfied that the Police officer had reasonable grounds for suspecting that such thing was an instrument of gaming, such circumstance shall, until the contrary is proved, be evidence that such thing was an instrument of gaming and that the person on or about whom the thing was found was present for the purpose of gaming.

Seizure and
destruction of
instruments
found.

Applicability, scope and object.—The object of the amended S. 12 (a) was to free the word "place" which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression "public street" and the word "thoroughfare".¹

S. 12 does not exclude the application of s. 4 in proper cases even though in certain circumstances s. 12 might apply to the same "place".²

Under s. 12 of the Bombay Act only those persons who are gaming are punishable and those who aid or abet are not punishable.³

In cases where the passage is a place in which the public have access or are permitted to have access, there might be an offence under s. 12.⁴

A man cannot be convicted merely because he is reasonably suspected by the Police Officer. A man may be arrested on a reasonable suspicion of gaming in a public place, but he can be convicted of the offence at which s. 12 is aimed i. e., actual gambling in public.⁵

Where an accused travelling in a train is arrested, he cannot be convicted under s. 12 for having been found in possession of wagering chits and

1. *Mangubhai v. Emp.*, 54 Bom. 491=1930 Bom. 369=127 I. C. 81=31 Cr. L. J. 1119=32 Bom. L. R. 790.
2. 1939 Sind 184=40 Cr. L. J. 817=183 I. C. 562=I. L. R. (1939) Kar 741.
3. *Shadi Ram v. Emp.*, 1933 Lah. 513=141 I. C. 543 (2)=34 P. L. R. 173=34 Cr. L. J. 174.
4. *Krishnaji Madhusuddan v. Emp.* 1940 Bom. 18=41 Bom. L. R. 1114=41 Cr. L. J. 273=186 I. C. 242.
5. *Emp. v. Sonabhai* 1938 Bom. 484=I. L. R. (1939) Bom. 53=178 I. C. 588 =40 Cr. L. J. 97=40 Bom. L. R. 1082 F. B.

money representing winnings which the accused intended to distribute at some of the places unless those winnings are shown to be winnings of gaming in a public place.⁶

Forfeiture—If justified.—In S. 12 of the Act, before as well as after its amendment, the forfeiture of money and the other severer penalties imposed by the section relate to a person convicted of wagering or betting but not to a person convicted merely of gaming : and so in a case of gaming the money and instruments of gaming found in a public place should be disposed of as directed in the section. Money should be returned to the owner thereof and instruments of gaming should be directed to be destroyed and not sold.⁷

Presumption cannot be applied to public place.—The presumption mentioned in s. 5 of the Prevention of Gambling Act, cannot be applied to cases falling under s. 12 of the Act.⁸

Where the person seeking to gain by chance has to pay money and purchase a ticket before he will be allowed to take part or participate in the game at all, the selling of tickets is a part and parcel of the particular gaming ; and therefore, the person who sells the tickets and receives the money, which is the wager, takes just as great a part in the act of gaming as does the actual participant, and is therefore, guilty under S. 12 of the Act.⁹

Found gaming.—S. 12 does not require that the police should apprehend persons in the actual act of gaming. The words “found gaming” have a wider meaning than “seen gaming”. “Found” is more akin to “discovered” in its nature and purpose, and therefore, if people are found by the police in such circumstances that it is clear that when the police came upon the scene they were engaged in gaming, the section applies.¹⁰

Persons performing operations necessary for gaming.—Where in a certain game, certain operations are to be performed to enable the gamster to play the game, the persons taking part in such operations must be deemed to be gaming within the provision of the Act as they actually assist in the gaming.¹¹

Place, meaning of.—The word “place” in S. 12 of the Act is qualified by the word “public” and having regard to its context, and its position in that context, it must mean a place of the same general character as a road or thoroughfare, else it was pointless to use the words, street or thoroughfare as they are there used. A railway carriage forming part of a through special train is not a public place within the meaning of S. 12 of the Act. Per Jenkins, C. J.,—“I would be slow to place on the section (s 12) on interpretation that would curtail its legitimate scope, but I am

6. *Emp., v. Somabhai J. L. R.* (1939) Bom. 53=1938 Bom. 484=40 Bom L. R. 1082=40 Cr. L. J. 97=178 I. C. 588 F. B.

7. *Mohammad Hussan v. Emp.*, 31 S. L. R. 44=169 I. C. 35=38 Cr. L. J. 668 R. S. 255=A. I. R. 1937 Sind 99.

8. *Emp. v. Hiralal Motilal*, 15 Bom. L. R. 331=2 Bom. C. R. C. 74=20 Ind. Cas. 143=14 Cr. L. J. 383.

9. *Ghanshamdas v. Emp.*, 29 S. L. R. 349=164 I. C. 642=9 R. S. 5=37 Cr. L. J. 1005=1936 Cr. C. 803=A. I. R. 1936 Sind 126.

10. *Ibid.*

11. *Mohammad Havan v. Emperor*. 31 S. L. R. 44=169 I. C. 35=38 Cr. L. J. 668=9 R. S. 255=A. I. R. 1937 Sind 99.

unable to regard the railway carriage, in which the accused were, as possessing such characteristics of, or bearing such a resemblance to, a street or thoroughfare as to justify us in holding that it was a public place within the meaning of S. 12." Per Russell, J. "I am of opinion that to call or describe either the railway line at the spot in question (i. e., at the Reversing Station, where the train stopped for engine purposes only and where the public would not have any right, without the permission of the Railway Company to be on the line at all) or the carriage (in a Special train, which took no passage passengers between the termini of the journey in which the accused were playing, as coming within any of the terms public street, place or thoroughfare (in S. 12 of the Act) would be to place a wrong interpretation upon those words."¹²

Public place.—Whether a place is one to which the public have or are permitted to have access within the meaning of S. 12 of the Act is a question of fact. No distinction can be made between a right conferred on the public by a statutory provision or a resolution of a Municipality, and a right conferred on the public by a private owner or body, but the use to which it is put. If a private owner expressly or by implication invites the public generally to enter his garden it is a "place to which the public have or are permitted to have access" within the meaning of section 12. The fact that the owner reserves to himself the right to exclude undesirables is not material.¹³

Public place—Swami's Math.—The accused were found playing for money with cards in a Math, which was enclosed in a compound wall and off the highway, it was managed by a Swami of the Lingayet community and was open to all Lingayets and to other castes, subject to certain restrictions. The Swami could, if he chose, keep the people out. Under these circumstances, the accused were convicted of an offence punishable under S. 12 of the Prevention of Gambling Act. Held, setting aside the convictions and sentences, that the 'Math' could not be regarded as a public place within the meaning of the Act.¹⁴

Hotel where public are permitted.—The words in the amended S. 12. Gambling Act. "In any place to which the public have or are permitted to have access" would include a hotel. The public have a right to go to a hotel provided there is accommodation available in it, and can be said to have or to be permitted to have access to it.¹⁵

Machhwa (Boat) is not public Place.—The accused fourteen in number, chartered a machhwa (boat), and having got in anchored in the Bombay harbour a mile away from the land, carried on gambling there. For this, they were convicted of an offence under s 12 of the Act for gaming in a public place.

Held, that the accused were not guilty of an offence under s. 12 of the Act, since they could not be said to be gambling in a public place.¹⁶

12. *Emperor v. Hussain Noor Mohamed*, 0 Bom. L. R. 22=30 B. 348=3 Cr. L. J. 216.

13. *Tahirali v. Emperor*, 30 S. L. R. 72=164 I. C. 58=9 R. S. 29=37 Cr. L. J. 876 = 1936 Cr. C. 674=A. I. R. 1936 Sind 90.

14. *Emperor v. Chenappa*, 15 Bom. L. R. 101=2 Bom. Cr. C. 24=19 Ind. Cas. 167=14 Cr. L. J. 167.

15. *Mangubhai Dahvabhai v. Emperor*, 32 Bom. L. R. 790=1930 Cr. C. 848=A. I. R. 1930 Bom. 369.

16. *Emperor v. Jusbally*, 29 Bom. 386=7 Bom L. R. 333=2 Cr. L. J. 252.

Street.—A person sitting in a shop at a place where he is readily accessible to any person who wished to bet with him from the public street without having to enter the shop at all, is liable for betting or gaming in the street under S. 12.¹⁷

Game, meaning of.—Gaming in S. 12 does not include a wager; betting on a horse race is not covered by S. 12.¹⁸

Seizure of currency notes and cash.—Although currency notes and cash found on the person alleged to be a gambler cannot in themselves be regarded as “instruments of gaming”, they would fall within the definition of the instruments of gaming if they are used as subject or means of gaming.¹⁹

Powers of arrest.—It is not lawful for a police officer to arrest without warrant the persons he finds playing unless they are playing for money or other valuable thing.²⁰

Sentence.—There should be no disproportionate punishment in the case of very petty offences.²¹ Where a person is convicted of an offence under s. 12, Prevention of Gambling Act, he can be sentenced to pay a fine or to undergo imprisonment, but not to both.²²

12A. A Police-officer may apprehend without warrant any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, news-sheet or other document or any news or information with the intention of aiding or facilitating gaming.

Power to arrest without warrant for printing, publishing or distributing any news or information.

Any such person shall, on conviction, be punishable in the manner and to the extent referred to in section 4.

And any police-officer may enter and search any place for the purpose of seizing, and may seize all things reasonably suspected to be used, or to be intended to be used for the purpose of committing an offence under this section.

13. Nothing in this Act shall be held to apply to any game of mere skill wherever played.

Saving of games of mere skill

17. *Fakirbhai v. Emperor*, 28 Bom. L. R. 92=27 Cr. L. J. 452=93 I. C. 244=A. I. R. 1926 Bom. 149.

18. *Emperor v. Vithaldas Hirgi*, 19 Bom. L. R. 830=42. 1. C. 920=19 Cr. L. J. 3.

19. *Tribhawan Moti Ram v. Emperor* 53 Bom. 137=1929 Bom. 74=31 Bom. L. R. 53=30 Cr. L. J. 794=117 I. C. 434.

20. 16 Bom. 283 F. B. (Ref. 28 Bom. 129).

21. *Mahomed Bethce v. Emperor* 41 Bom. 149=18 Bom. L. R. 940=37 I. C. 305=18 Cr. L. J. 97.

22. *Queen Empress v. Tukaram, Rat. Un. Cr. C. 686=Cr. Rg. 5 of 1894.*

"Mere skill"—Meaning of—The phrase "mere skill" in S. 13 of the Bombay Prevention of Gambling Act means pure skill, skill and nothing else. A game in which there is a substantial element of chance cannot be described as a game of mere skill or pure skill. In view of the provisions of S. 13 it is clear that if a game is played for stakes, it amounts to gaming and comes within the mischief of the Act, quite irrespective of the question whether chance or skill predominates, provided of course that it is not a mere game of skill, that is to say, a game in which there is no element of chance. No doubt, if the element of chance in a game is so small as to be negligible, it may be reasonable to ignore it. Playing a game of cards called *pettin-ate* for money stakes, is a gambling game and is not a game of mere skill so as to be exempted under S. 13.¹

"Game of skill"—Test to decide.—No game can be a game of skill alone, and in any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance to skill when deciding whether a game is a game of mere skill. Where the elements of chance most strongly preponderate, it cannot be a game of mere skill.²

A bagatelle board and billiard balls are capable of being used both for games of skill and games of chance, no presumption can be drawn under s. 7 of the Act.³

Game of dart—If game of skill or chance.—A game of dart in which skill cannot enter into the game to any material extent is not a game of skill but one of chance. Law is enacted for the average man and not for a person of unusual skill, and if taking the average man, chance and not skill is the deciding factor in a particular game, the game is a game of chance and amounts to gaming under the Act.⁴

1. *Emp, v. Kallappa Gurrappa* 41 Bom. L. R. 970=A. I. R. 1939 Bom. 481.

2. *Mohammad Hasan v. Emp.*, 31 S. L. R. 44=169 I. C. 35=38 Cr L. J. 668=9 R. S. 255=A. I. R. 1937 Sind 99.

3. *Queen Emp, v. Masukh Raichand Rat.* U. Cr. C. 923=Cr. Rg. 28 of 1897.

4. *Ghanshemdas v. Emp.*, 29 S. L. R. 349=164 I. C. 642=9 R. S. 50=37 Cr. L. J. 1005=36 Cr. C. 803=A. I. R. 1936 Sind 126.

THE BENGAL PUBLIC GAMBLING ACT

(II of 1867)

An Act to provide for the punishment of public gambling and the keeping of common gaming house in the territories subject to the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to make provisions for the punishment of public gambling and the keeping of common gaming house in the territories subject to the Lieutenant-Governor of Bengal ; IT IS ENACTED as follows :—

1. In this Act “common gaming house” means any house, room, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the persons owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, place or otherwise howsoever.

“Gaming” includes wagering or betting [except wagering or betting upon a horse-race, when such wagering or betting takes place—

(a) on the day on which such race is to be run, and

(b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose] but does not include a lottery.

“Instruments of gaming” includes any article used as a means or appurtenance of or for the purpose of carrying on or facilitating gaming.

Common gaming house.—Where the premises of Messrs. J. and Co., were used during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of the durwans left in charge thereof, held that the premises could not be regarded as a “common gaming house,” even though the durwans might have made some profit out of the gambling which went on there.¹

A house cannot be considered, as exclusively private in its character, which is used for the purpose of gaming, by a large party of people of

1. *Mohesh Narain Panday v. Emperor*, 11 C. W. N. 972=6 Cr. L. J. 228.

different social position and standing who would not ordinarily be friends or guests of the owner. S. 6 would raise a presumption that such a house in which coins and cowries were found was a common gaming house.²

Gaming—The definition in the Act does not really define gaming but merely indicates what it is like and excludes wagering or betting on some particular occasions and in some particular circumstances and also excludes "lottery". To bring the case within the meaning of "gaming" all that has to be seen is whether the game that was going on was for money which was staked on the result of the game which was to be lost or won according to the success or failure of the person who has staked provided of course that it was not a lottery.³

Racing in partnership-Validity.—It cannot be held that persons who enter into partnership for the purpose of making agreements not forbidden but recognised by law, though unenforceable at law, are persons who conduct a business, the very nature of which disentitles them to have recourse to Courts of law to recover the claims otherwise sustainable.⁴

Counterfoil receipts bearing names of horses.—It is doubtful whether the view that counterfoil receipts bearing names of certain horses on which bets had apparently been made which were found in the possession of the accused are instruments of gaming is sound. Accused in possession of such counterfoils was held not guilty when there was no clear evidence as to what the accused was doing at the time of arrest.⁵

Possession of racing guides and notes on horses.—Having racing guides and notes on horses does not necessarily justify the inference that accused were taking unauthorised bets. It is not unlawful for men to possess racing guides and notes on horses specially when they are on their way to the race course to attend the races.⁶

Instruments of gaming.—Although coins are not instrument of gaming, yet cowries being different from coins, may be treated as instruments of gaming, when they are used as counters, or as a means to carry on gaming. The finding of cowries in a house upon search made under a warrant, will, under S. 6 of the Act, raise a rebuttable presumption that the house is used as a common gaming house.⁷

Although coins and cowries may not necessarily be implements of gaming yet, when it is found that they are actually used in gaming, they do become within the meaning of the Act "instruments of gaming".⁸

The accused kept a machine known as "little horses" which consisted of metal figures of horses which could be made to move in concentric circles by turning a handle. The horse which occupied a certain position when the machine halted after being thus set in motion, is the winning horse. The public staked their money on any of the horses before the machine was

2. *Amrit Singh v. King Emperor*, 5 C. W. N. 503.

3. *Arjoon Singh v. Emperor* 1929 Cr. C. 513=33 C. W. N. 910=A. I. R. 1929 Cal. 769.

4. *Leicester Co. v. S. P. Malik* 27 C. W. N. 442=80 I. C. 498=A. I. R. 1923 Cal. 445.

5. *Amulya Dhona Ghose v. Ram Sundar Singh* 175 I. C. 446.=10 R. C. 803=A. I. R. 1938 Cal. 422.

6. *Prasulla Kumar Mukherjee v. Emperor* 178 I. C. 412=A. I. R. 1938 Cal. 713.

7. *Queen-Emress v. Makund Ram*, 25 C. 432.

8. *Amrit Singh v. King Emp.* 5 C. W. N. 503.

started. The accused took all the stakes returning four times their stakes to those who had staked on the winning horse. The place, in which the machine was kept, was an open piece of ground near a bazaar and was not separated from it by any wall or fence, although it was private property. Held, that the machine was an instrument of gaming and the place was a public place.⁹

2. It shall be competent to the Lieutenant-Governor of Bengal, whenever he may think fit, to extend by a notification to be published in the Calcutta Gazette, all or any of the sections of this Act to any city, town (save the town of Calcutta as defined by Act VI of 1863 passed by the Lieutenant-Governor of Bengal in Council) or place within the territories subject to his Government, and in such notification to define for the purpose of this Act, the limits of such city, town or place and from time to time alter the limits so defined.

Absence of extension of Act—effect.—In the undernoted case in consequence of the Government Notification extending Bengal Act II of 1867 to Jungipore not having been published in three consecutive numbers of the Government Gazette, a sentence of rigorous imprisonment in default of payment of fine passed under that Act was cancelled.¹

3. Whoever, being owner or occupier, or having the use of any house, tent, room, space, or walled enclosure, situate within the limits to which this Act applies, opens, keeps, or uses the same as a common gaming house: and whoever, being the owner or occupier of any such house, tent, room, space or walled enclosure as aforesaid, knowingly, or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming house and whoever has the care or management of, or in any manner assists in conducting the business of any house, tent, room, space or walled enclosure as aforesaid; opened, occupied, used or kept for the purpose aforesaid, and whosoever advances or furnishes money for the purpose of gaming to persons frequenting such house, tent, room, space or walled enclosure, shall be liable on conviction before any Magistrate to a fine not exceeding two hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code for any term not exceeding three months.

Penalty for owning or keeping or having charge of common gaming house.

9. Hari Singh v. Jadu Nandan Singh, 31 C. 542=8 C. W. N. 458=1 Cr. L. J. 349.

Section 2

1. Queen v. Zohur Sheikh, 18 W. R. Cr. 41.

Scope.—A conviction under S. 3 of the Bengal Act (II of 1867) cannot be sustained in the absence of a finding that the premises in question were being used as a common gaming house within the meaning of the definition in S. 1. In order to establish this point, the prosecution would have to prove that the instruments of gaming found in the place were kept or used for the profit of the lessee of the premises.¹

Conviction under s. 3 or s. 4—legality.—When the requirements of s. 5 are not complied with strictly, the presumption under s. 6 does not arise and if there is no evidence showing that the premises had been kept for the profit or gain of the accused, they cannot be convicted under s. 3 or s. 4.²

4. Whoever is found in any such house, tent, room, space or walled enclosure, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise shall be liable on conviction before any Magistrate to a fine not exceeding one hundred rupees or to imprisonment of either description as defined in the Indian Penal Code for any term not exceeding one month and any person found in any common gaming house during any gaming or playing therein shall be presumed until the contrary be proved to have been there for the purpose of gaming.

Scope.—To sustain a conviction under s. 4 of the Act, two things have to be established, first, that the accused were found gaming, and, second, that the place where they were found was a common gaming house within the meaning of the Act. The mere fact of gambling having taken place in the house on previous occasions is not sufficient to make it a common gaming house within the meaning of the Act.¹

5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate, or the District Superintendent of Police upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, tent, room, space or walled enclosure is used as a common gaming house, he may either himself enter or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor shall appoint in this behalf, to enter with such assistance as may be found necessary by night or by day,

Penalty for
being found in
common gaming
house.

Power to enter
and authorize
police to enter
and search.

1. *Abdul v. Emp.*, 202 I. C. 677=43 Cr. L. J. 837=15 R. C. 392=A. I. R. 1943 Cal. 121.

2. *Gangadas Banerji v. Emp.*, 1930 Cal. 365.

Section 4

1. *Queen Empress v. Mukand Ram*. 25 C. 432.

and by force if necessary, any such house, tent, room, space or walled enclosure, and may either himself take into custody, or authorize such officer to take into custody all persons to whom he or such officer finds therein, whether or not such persons may be there actually gaming, and may seize or authorize such officer to seize all instruments of gaming and all moneys and securities for money and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein; and may search or authorize such officer to search all parts of the house, tent, room, space or walled enclosure which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein and also the persons of those whom he or such officer so takes into custody and may seize or authorize such officer to seize or take possession of all instruments of gaming found upon such search.

Essentials of valid warrant.—A “common gaming house” has a special meaning under the Public Gambling Act, and unless that expression is used in a warrant under s. 5 the prosecution cannot avail themselves of the special provisions in s. 6. Hence a warrant under s. 5 which does not state that the magistrate who granted it had reason to believe that the premises were used as a common gaming house is defective even if it says that he was led to believe that they were used for the purpose of bucket shop gambling on race horses.¹

A warrant issued under S. 5 of the Bengal Public Gambling Act must indicate that the Magistrate has reason to believe that the house which he directs to be searched is used as a common gaming house, or, in other words, as a house which is used by its owner or occupier for the purpose of making profit out of gambling transactions which take place therein. A warrant which merely states that the Magistrate has reason to believe that the house is used for certain gambling is not legal, and if the house is searched under such a warrant, the presumption which is raised under S. 6 of the Act cannot arise from the instrument of gaming found therein. In such a case, it must be proved by independent evidence that the owner or the occupier of the house derived a profit from the use of these instruments of gaming.²

Unauthorised arrest—effect.—Where a Sub-Inspector of police, not authorised to do so by the District Magistrate or Superintendent of Police,

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1. *Emp. v. Gobind Chandra Das* 192 I. C. 182=1940 Cal. 586=42 Cr. L. J. 253=44 C. W. N. 1123=71 C. L. J. 542.
 2. *Jitendra Bhuban Das v. Emp.*, I. L. R. (1941) 1 Cal. 58=195 I. C. 7=14 R. C. 39=42 Cr. L. J. 643=45 C. W. N. 24=A. I. R. 1941 Cal. 413.

under s. 5 of the Act, enters an alleged gambling house and arrests persons, a Magistrate cannot convict them, even the presumption of evidence created by s. 6 not arising in such a cases.³

A Magistrate can convict persons under s. 5 of Act II of 1867 (B. C.) even on an unauthorised and illegal arrest by a police officer, provided there is proof, independent of the presumption raised in s. 6 of the Act, that the house where the arrest was made, is a gaming house.⁴

6. Where any cards, dice, gaming table, cloth, boards or other instruments of gaming are found in any house, tent, room, space or walled enclosure entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, tent, room, space or walled enclosure is used as a common gaming house, and that persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer or by any person acting under the authority of either of them.

Finding cards, etc., in suspected houses to be evidence that they are common gaming house.

Scope.—S. 6 of the Bengal Public Gambling Act merely provides that the finding of the instruments of gaming shall be evidence that the premises used is a common gaming house. It is for the Magistrate to say whether he is prepared to come to such a finding or not.¹

Presumption when arises.—The presumption of law under S. 6 arises only in the peculiar circumstances mentioned by the statute itself, i. e., if the warrant authorises a search on the footing of the premises being a common gaming house and when the result is a find of instruments of gaming. When the requirements of S. 5 are not strictly complied with in as much as the Magistrate does not say anywhere in the proceedings that the premises were used for a common gaming house, the presumption under S. 6 does not arise, and if there is no evidence showing that the premises had been kept for the profit or gain of the accused, they cannot be convicted under S. 8 or S. 4.²

Warrant defective—Presumption if arises.—Where a warrant under s. 5 is defective, prosecution cannot avail of the presumption under s. 6.³

Before S. 6 of the Bengal Public Gambling Act can be invoked in aid of the prosecution, it must be established that before the search the police

3. *Sreram Chandra Lerkar v. Bipindas*, 4 C. 710. (F. 12 Cr. L. J. 28=8 Ind. Cas. 1127=6 N. L. R. 168).

4. *Nazir Khan v. Proladh Dutta*, 4 C. 659. (F. 12 Cr. L. J. 26=8 I. C. 1127=6 N. L. R. 168; R. 1 U. B. R., 1892—1896, Vol. 1, 123.)

Section 6

1. *Abdul v. Emp.* 202 I. C. 677=43 Cr. L. J. 887=15 R. C. 392=A. I. R. 1943 Cal. 121.

2. *Gangadas Banerji v. Emp.*, 51 C. L. R. 224=51 C. L. J. 396=1930 Cr. C. 541=A. I. R. 1930 Cal. 365.

3. *Emp. v. Gobind Chandra Das*, 192 I. C. 82=1940 Cal 586=42 Cr. L. J. 542. See also *Jitendra Bhushan Das v. Emp.*, 195 I. C. 7=1941 Cal 413=42 Cr. L. J. 643=45 C. W. N. 24=I. L. R. (1941) Cal. 58.

officer had reason to believe that the premises in question were used as a common gaming house. Evidence to the effect that he had reason to believe that gambling was going on there is not sufficient.⁴

Under S. 6 of the Public Gambling Act, the fact that certain books and betting slips were found in the house might be treated as evidence. But this section would not make the evidence on this point conclusive.⁵

Presumption under—Applicability to prosecution under.—All the persons present in such an enclosed place as a common gaming house, may naturally be supposed to be members of the gaming party. But in dealing with a public place where the gravamen of the offence may be said to be the danger of corrupting the morals of the innocent passerby, the presumption regarding anyone found present (unless something further is proved against him) is that he is an innocent passer-by. The mere fact that a person was found running away from public gambling place is not sufficient to support the presumption that he was actually gambling.⁶

7. If any person found in any common gaming house
 entered by any Magistrate or Officer of police
 under the provisions of this Act, upon being
 arrested by any such officer, or upon being
 brought before any Magistrate, or being required by such
 officer or Magistrate to give his name and address, shall refuse
 or neglect to give the same or shall give any false name or
 address, he may upon conviction before the same or any other
 Magistrate, be adjudged to pay any penalty not exceeding
 five hundred rupees, together with such costs as to such
 Magistrate shall appear reasonable, and on the non-payment
 of such penalty and costs, or in the first instance if to such
 Magistrate it shall seem fit, may be imprisoned for any period,
 not exceeding one month.

8. On conviction of any person for keeping or using any
 such common gaming house, or being present
 therein for the purpose of gaming, the convicting
 Magistrate may order all the instruments of
 gaming found therein to be destroyed, and may also order all
 or any of the securities for money and other articles seized
 not being instruments of gaming to be sold and converted into
 money, and the proceeds thereof with all moneys seized
 therein, to be forfeited, or in his discretion, may order
 any part thereof to be returned to the persons appearing to
 have been severally thereunto entitled.

4. *Abdul v. Emp.*, 202 I. C. 677=43 Cr. L. J. 287=15 R. C. 352=A. I. R. 1943 Cal. 121.

5. *Benoy Krishna Roy v. Emp.*, 13 R. C. 344=42 Cr. L. J. 319=A. I. R. 1941 Cal. 32.

6. *Ramjanak Patwa v. Emp.*, 166 I. C. 840=9 R. P. 518=38 Cr. L. J. 608=3 B. R. 499=18 Pat. L. T. 332=1937 P. W. N. 388=A. I. R. 1937 Pat. 276.

9. It shall not be necessary in order to convict any person of keeping a common gaming house or of being concerned in the management of any common gaming house, to prove that any person found playing therein at any game was playing for any money, wager or stake.

Proof of playing for stake unnecessary.

10. *Repealed by Section 3 (3) of Bengal Act IV of 1913 published in the "Calcutta Gazette" on 14th May 1913.*

Act not to apply to certain games.

11. A police-officer may apprehend without warrant any person found gaming in any public market, fair, street, place or thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public market, fair, street, place or thoroughfare situated within the limits aforesaid, or any person there present aiding and abetting such public fighting of birds and animals.

Gaming and setting birds and animals to fight in public street.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month, and such police-officer may seize all birds and animals and instruments of gaming found in such public place or on the person of those whom he shall arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed and such birds and animals to be sold.

Applicability.—Gambling in anosara (verandah belonging to a private owners) would not be an offence under S. 11 of the Act, if the verandah is not used as a common gaming house, although the verandah may be accessible to the public in the sense that there is no physical obstruction to a person desirous of stepping on to it.¹

Confiscation only upon conviction.—If the conviction under S. 11 cannot be sustained, the order for confiscation must also fall.²

All persons present in a common gaming house may naturally be supposed to be members of the gaming party. But in dealing with a public place where the gravamen of the offence may be said to be the danger of corrupting the morals of the innocent passer-by, the presumption regarding any one found present (unless something further is proved against him) is that he is an innocent passer-by. The mere fact of running away is not sufficient to support the presumption that the persons who ran away were actually gambling.³

1. *Empress v. Raghoonandan Singh*, 31 C. 912, Note.

2. *Khudi Sheikh v. King Emp.* 6 C. W. N. 33.

3. *Janak Patwa v. Emp.* 168 I. C. 840—1937 Pat 276—38 Cr. L. J. 608—18 P. L. T. 352.

Place.—The word “place” in S. 11 cannot but be a public place, and is evidently ejusdem generis with the other words in the section public market, fair, street or thoroughfare. A place within a Thakurbari surrounded by a high compound wall is not a public place.⁴

If the conviction under S. 11 cannot be sustained, the order for confiscation must also fall.⁵

Public place.—It is not necessary that a public place for gambling should be public property; but if it is private property, the public must have access to it; nor is it sufficient that a place should be accessible to the public, it must be a place to which the public do in fact resort. Where the public has no access a place cannot be called a public place.⁶

Open space near a bazar with little houses.—A place may be a public place though it may be the private property of an individual. Where a place is in any way dedicated to the use of the public, it is of course a public place. But when it is owned privately, and such dedication has taken place, the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it. If the place is an open piece of ground, the presumption that it is a public place is naturally more easily created than where it is a building or is surrounded by a wall.⁷

Osara enclosed on all sides with doors.—The accused were convicted under s. 11 of the Bengal Gambling Act. The place in which the gambling was held, was an osara, enclosed on all sides with doors opening towards the road, and with a platform between the osara road, and the road, and was a part of a building, the private property of certain individuals. It was used during the day as a shop, but not so in the night. The gambling in question took place after midnight on a certain day. Held, that the place was not a public place within the meaning of s. 11 of the Act.⁸

Exemption of
games of mere
skill.

11A. Nothing in this Act shall apply to any game of mere skill wherever played.

Game of skill or chance.—A finding whether the “ring game” is a game of skill or chance is a finding of fact and, unless there is a grave error, the High Court will not interfere.¹

4. *Khudi Sheikh v. King Emp.*, 6 C. W. N. 33.

5. *Khudi Sheikh v. King Emp.*, 6 C. W. N. 33. (R., 10 Cr. L. J. 16, 14 Cr. L. J. 670=21 Ind. Cas. *Ibid.*)

6. *Ram Janak Patwa v. Emp.*, 18 Pat. L. T. 352=1937 P. W. N. 388=168 I. C. 840=9 A. P. 518=38 Cr. L. J. 608=3 B. R. 499=A. I. R. 1937 Pat. 276.

7. *Hari Singh v. Jadu Nandan Singh* 31 C. 542=8 C. W. N. 458=1 Cr. L. J. 340.

8. *Durga Prasad Kalwar v. Emp.*, 31 C. 910=8 C. W. N. 592.

Section 11A

1. *Damri Mian v. Emp.*, 3 U. P. L. R. (Pat) 55=61 I. C. 518=22 Cr. L. J. 390.

Game of chance or skill—Chief element, skill.—If a game is one of skill, it is not an offence, under the Public Gambling Act, if it is a game of mere chance it is. Where the chief element of a game is one of skill, the game is not an offence, although there is an element of chance in it.²

Question whether game is of pure chance or one in which skill preponderates.—The question as to whether a game is one of pure chance or one in which the element of skill preponderates is no longer pertinent under the Act as it stands now. What is to be seen is whether the game is covered by what is meant by "gaming", if it is, it is hit by the Act unless it is a game of mere skill.³

12. Offences punishable under this Act shall be triable
Offences by whom triable. by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure as to the amount of fine or imprisonment he may inflict.

13. Whoever, having been convicted of an offence punishable under this Act, shall be guilty of any
Penalty for subsequent offence. such offence, shall be subject for every such subsequent offence to double the amount of punishment to which he could otherwise have been liable for the same :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees or to imprisonment for a term exceeding one year.

14. All fines imposed under the Act shall (subject to the
Application of fines. provision contained in the last preceding section) be applied as the said Lieutenant-Governor shall from time to time direct.

15. Anything made punishable by this Act shall be
Application of definition of "offence" in Indian Penal Code. deemed to be an offence within the meaning of the Indian Penal Code.

2. Hari Singh v. King Emp, 6 C L J. 703=8 Cr. L. J. 421. (Diss. 23 Ind Cas. 612; D. 34 A. 96=3 A. L. J. 1232=12 Cr. L. J. 612=12 Ind. Cas. 988)
 3. Arjoon Singh v. Emp 1929 Cr. C 513=A. I. R. 1929 Cal. 769=125 I G. 643=57 Ca. 1520.

16. The provisions of the Sections 7 and 11 of this Act shall apply to the town of Calcutta and from time to time defined by any notification published by the Lieutenant-Governor in pursuance of Act 11 of 1866 passed by the Lieutenant-Governor of Bengal in Council; and the provisions of Section 13 of this Act shall apply to the whole of the said territories.

Certain section
to apply without
extension.

17. [*Repealed by Act of 1903.*]

APPENDIX A.

THE UNITED PROVINCES PUBLIC GAMBLING ACT

(As amended by the United Provinces Amendment Act I of 1917, Act V of 1919 and Act I of 1925.)

An Act to provide for the punishment of gambling and the keeping of common gaming houses in the United Provinces of Agra and Oudh.

WHEREAS it is expedient to amend the Public Gambling Act, 1867, in its application to the United Provinces ;

IT IS HEREBY enacted as follows :—

Short title. 1. (1) This Act may be called “ The United Provinces Public Gambling Amendment Act ”.

Extent. (2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

Interpretation
clauses.

In this Act :—

“ Lieutenant-Governor ” means the Lieutenant-Governor (now Governor) of the United Provinces of Agra and Oudh.

Lieutenant-
Governor.

“ Gaming ” includes wagering or betting, except wagering or betting upon a horse-race, when such wagering or betting takes place—

(a) on the day on which such race is to run, and

(b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose, but does not include a lottery ;

“ Instruments of gaming ” includes any articles used as a means or appurtenance of, or for the purpose of, carrying on or facilitating gaming ;

“ Common gaming house ” means—

- (1) In the case of gaming on the digits of the sale of any commodity, for example, opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles, or on the occurrence or non-occurrence of any natural events, for example, rainfall, or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which instruments of gaming are kept or used for such gaming;
- (2) In the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, walled enclosure, space, vehicle, vessel, place or otherwise howsoever.

2. Sections 13 and 17 of this Act shall extend to the whole of the said territories, and it shall be competent to the Governor, whenever he may think fit, to extend by a notification to be published in the official gazette, all or any of the remaining sections of this Act to any area within the United Provinces.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the said territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use of any house, room, tent, walled enclosure, space, vehicle, vessel or place situate within the limits to which this Act applies, opens keeps or uses the same as a common gaming house ;
 and

whoever, being the owner or occupier of any such house, room, tent, walled enclosure, space, vehicle, vessel or place as

aforesaid knowingly or wilfully permits the same to be opened, occupied, used or kept for the purpose aforesaid; and

whoever has the care or management of, or in any manner assists in conducting the business of any house, room, tent, walled enclosure, space, vehicle, vessel or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with the persons frequenting such house, room, tent, walled enclosure, space, vehicle, vessel or place,

shall be liable to a fine not exceeding two hundred rupees or to imprisonment of either description as defined in the Indian Penal Code, for any term not exceeding three months.

4. Whoever is found in any such house, room, tent, walled enclosure, space, vehicle, vessel or place Penalty for being found in common gaming house playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month;

and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved to have been there for the purpose of gaming.

5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, room, tent, walled enclosure, space, vehicle, vessel or place is used as a common gaming house, Power to enter and authorise police to enter.

he may either himself enter, or by his warrant authorise any officer of Police, not below such rank as the Governor shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force,

name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction for keeping a gaming house, instruments of gaming to be destroyed such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. It shall be lawful for the Magistrate before whom any person shall be brought, who have been found in any house, room, tent, walled enclosure, space, vehicle, vessel or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, room, tent, walled enclosure, space, vehicle, vessel or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room, tent, walled enclosure, space, vehicle, vessel or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate or by or before any court on any proceeding or trial in any

tion of the offender, order such instruments to be forthwith destroyed.

13A. Nothing in this Act shall apply to any game of mere skill as distinguished from a game of chance or a game of chance and skill combined, unless it is carried on in a common gaming-house.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under Section 3 or Section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under Sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. All fines imposed under this Act may be recovered in the manner prescribed by Section 61 (now Sections 386, 387 and 388 of the Code of Criminal Procedure), and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

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APPENDIX B

THE CENTRAL PROVINCES PUBLIC GAMBLING ACT

(As amended by Central Provinces Amendment Act III of 1927).

An Act to amend the Public Gambling Act III of 1867 in its application to the Central Provinces.

WHEREAS it is expedient to amend the Public Gambling Act, 1867, in its application to the Central Provinces;

IT IS HEREBY enacted as follows :—

1. (1) This Act may be called “The Public Gambling
Short title. (Central Provinces Amendment) Act, 1927”.

(2) Section 3 of the Act shall come into force at once and
Commencement. the rest of the sections shall come into force in any city, town, suburb, railway station-house or local area, to which the sections of the Public Gambling Act, 1867, hereinafter referred to as “the said Act,” other than Sections 13 and 17 have been extended under Section 2 of the said Act, when the Local Government, by notification, has extended them thereto.

Interpretation
clause.

In this Act—

“Lieutenant-Governor” means the Lieutenant-Governor
Lieutenant- of the United Provinces of Agra and Oudh or of
Governor. the Punjab as the case may be.

“Chief Commissioner” means the Chief Commissioner of
Chief-Commis- the Central Provinces or of the North-West
sioner. Frontier Province as the case may be.

“Gaming” includes wagering or betting but does not include a lottery.

Any transaction by which a person in any capacity whatever employs another in any capacity whatever or engages for

another in any capacity whatever to wager or bet with another person shall be deemed to be "gaming".

The expression "instruments of gaming" includes any article used as a subject or means of gaming, and any document used as a register or record or evidence of any gaming.

"Common gaming house" means—

(i) in the case of gaming—

- (a) on the market-price of cotton, opium or other commodity or on the digits of the number used in stating such price, or
- (b) on the ground of variation in the market-price of any such commodity or on the digits of the number used in stating the amount of such variation, or
- (c) on the market-price of any stock or share or on the digits of the number used in stating such price, or
- (d) on the occurrence or non occurrence of rain or other natural event, or
- (e) on the quantity of rainfall or on the digits of the number used in stating such quantity,

any house, room, tent, enclosure, space, vehicle, vessel or any place whatsoever in which such gaming takes place or in which instruments of gaming are kept or used for such gaming ;

- (ii) in the case of any other form of gaming, any house, room, tent, enclosure, space, vehicle, or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel, or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel or place or instrument or otherwise howsoever."

Number. Words in the singular include the plural and *vice versa*.

Gender. Words denoting the masculine gender include females.

2. Sections 13 and 17 of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit to extend, by notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway station-house or local area within the territories subject to his government or administration, and in such notification to define, for the purposes of this Act, limits of such city, town, suburb, station-house or local area, and from time to time alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made as shall be inconsistent with or repugnant to any section so extended shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of any house, room, tent, enclosure, space, vehicle, vessel or place situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming house; and

whoever, being the owner or occupier of any such house, room, tent, enclosure, space, vehicle, vessel or place as aforesaid knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, tent, enclosure, space, vehicle, vessel or place as aforesaid, opened, occupied, used or kept for the purpose as aforesaid; and

whoever advances or furnishes money for the purpose of gaming with the persons frequenting such house, room, tent, enclosure, space, vehicle, vessel or place, shall be punished—

- (a) for a first offence with imprisonment which may extend to three months or with fine which may extend to five hundred rupees ;
- (b) for a second offence with imprisonment which may extend to six months and, in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than seven days, either with or without fine which may extend to one thousand rupees ; and
- (c) for a third or subsequent offence with imprisonment which may extend to six months and, in the absence of special reasons to the contrary to be mentioned in the judgment of the court, shall not be less than one month, together with fine which may extend to one thousand rupees.

4. Whoever is found in any such house, room, tent enclosure, space, vehicle, vessel or place playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month ; and any person found in any common gaming house during any gaming or playing therein shall be presumed until the contrary be proved to have been there for the purpose of gaming.

5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place is used as a common gaming house,

he may either himself enter, or by his warrant authorise any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room or place ;

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming ;

and may seize, or authorise such officer to seize, all instruments of gaming, and all money and securities for money, and articles of value, reasonably suspected to have been used, or intended to be used, for the purpose of gaming which are found therein ;

and may search, or authorise such officer to search, all parts of the house, walled enclosure, room or place, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

6. When any cards, dice, gaming tables, cloths, boards or other instruments of gaming are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence until the contrary is made to appear, that such house, walled enclosure, room, or place is used as a common gaming house and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police-officer, or any of his assistants.

7. If any person found in any common gaming house entered by any Magistrate or Officer of Police under the provisions of this Act, upon being arrested by any such Officer or upon being brought before any Magistrate, on being required by such Officer or Magistrate to give his name and address, shall refuse or neglect to give the same or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if

Finding cards etc., in suspected houses to be evidence that such houses are common gaming houses.

Penalty on persons arrested for giving false names and addresses

to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction for keeping a gaming house, instruments of gaming to be destroyed. such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management, of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. It shall be lawful for the Magistrate before whom any person shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room, or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts aforesaid, or from answering any question put to him touching the matter aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or

to answer any such question as aforesaid shall be subject to be dealt with in all respects as any person committing the offence described in Section 178 or Section 179 (as the case may be) of the Indian Penal Code.

11. Any person who shall have been concerned in gaming contrary to this Act and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respects of such gaming.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

Gaming and setting birds and animals to fight in public streets.

13. A Police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming used in playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such Police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction,

tion of the offender, order such instruments to be forthwith destroyed.

14. Offences punishable under this Act shall be triable
Offences by whom triable. by any Magistrate having jurisdiction in the place where the offence is committed.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure as to amount of fine or imprisonments he may inflict.

15. Whoever, having been convicted of an offence punishable under Section 4 of this Act, shall
Penalty for subsequent offence. again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description.

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any
Portion of fine may be paid to informer. portion of any fine which shall be levied under Sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. All fines imposed under this Act may be recovered in
Recovery and application of fines. the manner prescribed by Section 61 of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

APPENDIX C

THE PUNJAB PUBLIC GAMBLING ACT

(As amended by the Punjab Amendment Act I of 1929)

An Act to amend the Public Gambling Act III of 1867 in its application to the Punjab.

[This Act also applies to the Province of Delhi, *vide* Notification No. F 82—III— 83-Police, dated the 20th September 1933, by the Secretary to the Government of India, Home Department, in exercise of the powers conferred by Section 7 of the Delhi Laws Act XIII of 1917, subject to the following conditions :—

- (1) Subsection (3) of Section 1 shall be omitted.
- (2) In Section 3 for the words " Governor in Council " the words " Chief Commissioner " shall be substituted.]

WHEREAS it is expedient to amend the Public Gambling Act III of 1867 in its application to the Punjab, It is HEREBY enacted as follows :—

Interpretation
clause.

1. In this Act—

" Lieutenant-Governor " means the Lieutenant-Governor of the United Provinces of Agra and Oudh or of the Punjab, as the case may be.

Lieutenant
Governor.

" Chief Commissioner " means the Chief Commissioner of the Central Provinces or of the North-West Frontier Province, as the case may be.

Chief Commis-
sioner.

" Gaming " includes wagering or betting except wagering or betting upon a horse-race when such wagering or betting upon a horse-race takes place—

- (a) on the day on which such race is to be run, and
- (b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose,

but does not include a lottery.

"Instruments of gaming" includes any article used as a means or appurtenance of, or for the purpose of carrying on or facilitating gaming, and any document used as a register or record or evidence of any gaming.

"Common gaming house" means any house or room or tent or enclosure or vehicle or vessel or any place whatsoever in which any instruments of gaming are kept or used for gaming purposes—

- (a) with a view to the profit or gain of any person owning, occupying or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel, place or instruments or otherwise howsoever;
- (b) with or without a view to such profit or gain if the gaming for the purpose of which such instruments are so kept or used is gaming on any figures or numbers of dates to be subsequently ascertained, or on the occurrence or non-occurrence of any natural event.

2. Sections 18 and 17 of this Act shall extend to the whole of the said territories, and it shall be competent to the Governor in Council, whenever he may think fit, to extend by notification all or any of the remaining sections of this Act to any area within the territories administered by the Local Government.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of any house, room, tent, enclosure, vehicle, vessel or place, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming house; and whoever, being the owner or occupier of any such house, room, tent, enclosure, vehicle, vessel or place, as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, tent, enclosure, vehicle, vessel or place, as aforesaid, opened, occupied, used or kept for the purpose ; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room, tent, enclosure, vehicle, vessel or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

4. Whoever is found in any such house, room, tent, enclosure, vehicle, vessel or place playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month ;

Penalty for being found in gaming house.

and any person found in any common gaming house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. If the Magistrate of a district or other officer invested with the full powers of a Magistrate, or the District superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, room, tent, enclosure, vehicle, vessel or place is used as a common gaming house,

Power to enter and authorise police to enter and search.

he may either himself enter, or by his warrant authorise any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf to enter with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, room, tent, enclosure, vehicle, vessel or place ;

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming ;

and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein ;

and may search or authorise such officer to search all parts of the house, room, tent, enclosure, vehicle, vessel or place, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

6. When any cards, dice, gaming tables, cloths, boards or other instruments of gaming are found in any house, room, tent, enclosure, vehicle, vessel or place entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, room, tent, enclosure, vehicle, vessel or place is used as a common gaming house and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming houses.

7. If any person found in any common gaming house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested, by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Penalty on persons arrested for giving false name and addresses.

8. On conviction for keeping a gaming house instruments of gaming to be destroyed. On conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. Proof of playing for stake unnecessary. It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. Magistrate may require any person apprehended to be sworn and give evidence. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, room, tent, enclosure, vehicle, vessel or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation and give evidence touching any unlawful gaming in such house, room, tent, enclosure, vehicle, vessel or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room, tent, enclosure, vehicle, vessel or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence

described in Section 178 or Section 179 (as the case may be) of the Indian Penal Code.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming and who, upon such examination, shall in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate, a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. [*Act not to apply to certain games.*—*Repealed by Punjab Act I of 1929, Section 5.*]

Gaming and setting birds and animals to fight in public streets.

13. A police-officer may apprehend without warrant—

any person found gaming in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

and such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public streets.

8. On conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. It shall not be necessary, in order to convict any person of keeping a common gaming house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, room, tent, enclosure, vehicle, vessel or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation and give evidence touching any unlawful gaming in such house, room, tent, enclosure, vehicle, vessel or place or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room, tent, enclosure, vehicle, vessel or place or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence

described in Section 178 or Section 179 (as the case may be) of the Indian Penal Code.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming and who, upon such examination, shall in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate, a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. [*Act not to apply to certain games.*]*—Repealed by Punjab Act I of 1929, Section 5.*

Gaming and setting birds and animals to fight in public streets.

13. A police-officer may apprehend without warrant—

any person found gaming in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public streets.

Offences by
whom triable

committed.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure as to the amount of fine or imprisonment he may inflict.

Penalty for
subsequent
offence under
Section 3.

15. Whoever, having been convicted of an offence punishable under Section 8, shall again be convicted of any offence punishable under that section shall be punished—

(a) for a second offence with imprisonment of either description which may extend to six months, or with a fine which may extend to Rs. 1,000 or with both ;

(b) for a third or any subsequent offence, with imprisonment of either description which may extend to one year, and in the absence of special reasons to the contrary to be recorded in the judgment of the court, shall not be less than one month, together with a fine which may extend to Rs. 1,000.

Penalty for
subsequent
offence under
Section 4.

15A. Whoever having been convicted of an offence punishable under Section 4 shall again be convicted of any offence punishable under that section shall be liable for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description.

Portion of fine
may be paid to
informer.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under Sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

Recovery and
application of
fines.

17. All fines imposed under this Act may be recovered in the manner prescribed by Section 61 of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Gover-

nor or Chief Commissioner, as the case may be, shall from time to time direct.

Exemption of
games of mere
skill.

18. Nothing in this Act shall apply to any game of mere skill wherever played.

APPENDIX D

BURMA GAMBLING ACT NO. I OF 1899

(Corrected up to the 1st August 1922).

PASSED BY THE LIEUTENANT-GOVERNOR OF BURMA IN COUNCIL

(Received the assent of the Lieutenant-Governor on the 10th March 1899 and of the Governor General on the 1st April 1899.)

An Act to provide for the punishment of public gambling and the keeping of common gaming houses, and for the suppression of certain forms of gaming.

Preamble. WHEREAS it is expedient to make provisions for the punishment of public gambling and the keeping of common gaming houses and for the suppression of certain forms of gaming; IT IS HEREBY ENACTED as follows :—

Preliminary.

Short title, etc. 1. (1) This Act may be called the Burma Gambling Act, 1899 : and

(2) It extends to the whole of Burma except the Shan States.

Repeal. 2. The Burma Gambling Act, 1884, is hereby repealed : and the Public Gambling Act, 1867, shall, from the commencement of this Act, cease to be operative in Burma.

Interpretation clause. 3. In this Act, unless there is anything repugnant in the subject or context—

Common gaming house. (1) “ Common gaming house ” means any house, enclosure, room, place, vessel or vehicle, whether public or private, in which—

(a) any instruments of gaming are kept or used for the profit or gain of the person owning, occupying,

using or keeping such house, enclosure, room, place, vessel or vehicle, whether by way of charge for the use of the instruments of gambling as such, or of the house, enclosure, room, place, vessel, or vehicle, or otherwise howsoever for gaming purposes ; or where

- (b) the game of *ti* or any other game or pretended game of a like nature is carried on.

(2) The words “gaming” and “playing” with their grammatical variations and cognate expressions, include taking part in the game of *ti* or in any other game or pretended game of a like nature but do not include the promoting of or the taking part in any game of mere human skill, wherever played.

(3) The expression “instruments of gaming” means and includes—

- (a) any cards, dice, counters, coins, gaming-tables, gaming cloths, gaming-boards or other articles devised or actually used for the purpose of gaming ;
- (b) any boxes, receptacles, lists, papers, tickets or forms used for the purpose of the game of *ti* or any other game or pretended game of a like nature.

(4) The expression “betting office” means any house, enclosure, room, place, vessel or vehicle, whether public or private, which is used for wagering or betting upon any race, fight, game, sport or exercise, or for settling any such wagers or bets :

Provided that where a race meeting is held on any course under recognized racing rules any house, enclosure, room or place—

- (a) used on such course for the purpose of making or taking wagers, or bets upon any race on the day on which it is run and set apart in that behalf by the stewards controlling such meeting or
- (b) used for the purpose of settling wagers or bets so made or taken,

shall not merely on that account be deemed to be a betting office.

4. *[Repealed by Burma Act III of 1921.]*

Arrest without warrant, etc., for offences in public places.

5. A police-officer may arrest without warrant any person who in any street or thoroughfare or place to which the public have access, and within the view of such police-officer—

Power to arrest
with or without
warrant.

- (a) solicits or collects stakes for the game of *ti* or any other game or pretended game of a like nature; or
- (b) plays for money or other valuable thing with any instrument of gaming; or
- (c) sets birds or animals to fight; or
- (d) being there present aids and abets such public fighting of birds or animals; or
- (e) commits an offence punishable under clause (d) of Section 10.

Any such police-officer may seize all instruments of gaming or anything which under the provisions of Section 6 A may be seized in a betting office found in such place or on the persons of those whom he shall so arrest.

Power to seize
instruments of
gaming.

Searches of, and Arrest in, common gaming houses, etc.

6. (1) If the District Magistrate or any Sub-divisional Magistrate or Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government in this behalf, or the District Superintendent of Police, on credible information or on other sufficient grounds has reason to believe that any house, enclosure, room, place, vessel or vehicle is used as a common gaming house, he may, after recording in writing such information or grounds, either himself do any of the following acts, or by warrant authorize any officer of police not below the rank of sergeant or officer in charge of a police-station to—

Power to enter
and authorize
police to enter
and search
suspected house,
etc.

- (a) enter, within seven days from the date thereof, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, enclosure, room, place, vessel or vehicle ; and
- (b) take into custody all persons whom he finds therein, whether they are then actually gaming or not ; and
- (c) seize all instruments of gaming, and all moneys and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein ; and
- (d) search all parts of the house, enclosure, room, place, vessel, or vehicle, which he shall have so entered, when he has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he so takes into custody ; and seize and take possession of all instruments of gaming found upon such search.

(2) No Magistrate or District Superintendent of Police recording the substance of the information or grounds of belief under Sub-section (1) shall be bound to specify therein the name of any informer.

(3) All searches under Sub-section (1) shall be made in accordance with the provisions of Sub-section (3) of Section 102, and of Section 103 of the Code of Criminal Procedure, 1898.

(4) When any house, enclosure, room, place, vessel or vehicle is entered under Sub-section (1) by a police-officer, he shall, immediately after the completion of the proceedings under that sub-section, submit a report of such proceedings together with the warrant (if any) to a Magistrate who has jurisdiction to take cognizance of any offence which appears to have been committed and take or send to such Magistrate the persons arrested and articles seized :

Provided that the police-officer may release the persons so arrested on bail or on their own recognizances conditioned to appear before such Magistrate and unless, he produces such persons before a Magistrate within three hours from the arrest, he shall release them on such bail or recognizances as may be reasonably sufficient :

Provided also that, if no persons are arrested, the police-officer shall submit a report of his proceedings to the Magistrate who issued the warrant if any.

6A. (1) The District Magistrate or the District Superintendent of Police or when duly authorized by warrant issued by either of such officers, any Police-officer not below the rank of officer-in-charge of a police-station may, by day or by night, enter and search with such assistance as may be necessary, any house, enclosure, room, place, vessel or vehicle, which is reasonably believed to be used as a betting office, and seize any tickets, coupons, registers, books, or other documents found therein and used or intended to be used, or reasonably suspected to be used as record or evidence of any wager or bet upon any race, fight, game or exercise.

(2) All searches made under Sub-section (1) shall be made in accordance with the provisions of Sub-section (3) of Section 102 and of Section 103 of the Code of Criminal Procedure, 1898.

(3) No warrant issued under Sub-section (1) shall be executed after the expiry of seven days from the date thereof.

(4) When any house, enclosure, room, place, vessel or vehicle is entered under Sub-section (1) by a police-officer other than the District Superintendent of Police, he shall, immediately after the completion of the proceedings under that sub-section, submit a report to the District Magistrate or, if the warrant was issued by the District Superintendent of Police, to that officer.

Special Rules of Evidence, etc.

7. When any instruments of gaming are found in any house, enclosure, room, place, vessel or vehicle entered under the provisions of Section 6, or about the persons of any of those who are found therein, it shall be presumed, until the contrary is proved, that such house, enclosure, room, place, vessel or vehicle is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or by any one aiding in the entry.

Presumption
upon instru-
ments of gaming
being found in
places entered
under Act.

8. It shall be lawful for the Magistrate, before whom any persons are accused of an offence under Sections 10, 11, 12, and 13 to require any such persons to give evidence touching any unlawful gaming, or touching anything done with reference to or in furtherance of any unlawful gaming, or touching any act done for the purpose of preventing, obstructing or delaying the entry into any house, enclosure, room, place, vessel or vehicle or any part thereof of any Magistrate or officer authorized to make such entry.

Magistrate may require any person accused of offence under Act to give evidence.

9. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined (under Section 8 or otherwise) as a witness before a Magistrate on the trial of any person for an offence under this Act and who upon such examination shall, in the opinion of the Magistrate, make true and faithful discovery to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall thereby be absolved from punishment for any offence under this Act committed by him during such gaming.

Witnesses to be absolved from punishment.

Penalties.

Penalty for gaming or setting birds or animals to fight in public streets.

10. Any person who in any street or thoroughfare, or place to which the public have access—

- (a) plays for money or other valuable thing with any instrument of gaming ; or
- (b) sets any birds or animals to fight ; or
- (c) being there present aids and abets such public fighting of birds or animals ; or
- (d) in any local area to which the Local Government may by notification apply this clause in any manner invites or encourages any person to wager or bet on any race, fight, game, sport or exercise,

shall be liable to a fine not exceeding fifty rupees, or to imprisonment for any term not exceeding one month.

11. Whoever plays in any common gaming house, or is there present for the purpose of gaming, whether or not actually playing, shall be liable for a first offence to a fine not exceeding one hundred rupees, or to imprisonment for any term not exceeding one month, and for a subsequent offence to a fine not exceeding two hundred rupees or to imprisonment for any term not exceeding two months.

Penalty for playing or being in a gaming house.

12. Whoever—

- (a) being the owner or occupier, or having the use, of any house, enclosure, room, place, vessel or vehicle, opens, keeps or uses the same as a common gaming house ; or
- (b) being the owner or occupier of any house, enclosure, room, place, vessel or vehicle, knowingly permits the same to be opened, used or kept as a common gaming house ; or
- (c) has the care or management of, or in any manner assists in conducting, the business of any common gaming house ; or
- (d) advances or furnishes money for the purpose of gaming with persons frequenting any common gaming house,

shall be liable for a first offence to a fine not exceeding five hundred rupees or to imprisonment for any term not exceeding three months, and for a subsequent offence to a fine not exceeding one thousand rupees or to imprisonment for any term not exceeding six months.

Penalty on conducting game of *ti* and like games.

13. Whoever—

- (a) conducts or assists in conducting the game of *ti*, or any other game or pretended game of a like nature as manager, stake-holder or *daing* ; or
- (b) is according to the rules of the game or pretended game entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes, after

deducting the amount payable to the successful player or players ; or

- (c) promotes the game or pretended game by soliciting or collecting stakes or otherwise,

shall be punished with imprisonment for a term which may for a first offence extend to six months, and for a subsequent offence to two years, or with fine, or with both.

Penalty for keeping, managing or owning a betting house or office.

13 A. Any person who—

- (a) opens, keeps, manages or assists in the management of a betting office, or
- (b) being the owner or occupier or having the use of any house, enclosure, room, place, vessel or vehicle, knowingly permits the same to be opened, kept or used as a betting office,

shall be liable for a first offence to a fine not exceeding five hundred rupees or to imprisonment for any term not exceeding three months, and for a subsequent offence to a fine not exceeding one thousand rupees or to imprisonment for any term not exceeding six months.

Bar to prosecutions in certain cases.

Bar to prosecutions in certain cases.

14. No Court shall try an offence—

- (a) under Section 10 or Section 11 unless a complaint or a report or information in respect thereof has been made or given to, or cognizance thereof has been taken by a Magistrate within seven days of the date of the alleged commission of the offence, or
- (b) under Section 12 or Section 13 or Section 13A unless a complaint or a report or information in respect thereof has been taken by a Magistrate within one month of the date of the alleged commission of the offence.

Destruction of instruments of gaming and disposal of valuables seized.

15. (1) On the conviction of any person for an offence under Section 11, 12 or 13, committed in any common gaming house entered under the provisions of Section 6, the convicting Magistrate may order any instruments of gaming found therein to be destroyed, and may also order any other articles seized to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited; or in his discretion, may order any of such articles and the whole or any part of such money to be returned to the persons appearing to have been severally thereunto entitled.

(2) On the conviction of any person for an offence under clause (a) of Section 10 or under Section 11, 12 or 13, the convicting Magistrate may order all instruments of gaming seized under Section 5 to be destroyed or forfeited.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under Section 10, 11, 12, 13 and 13A, or any part of, the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to any person who has contributed in any way to the conviction.

Security for good behaviour.

17. Whenever a District Magistrate, Sub-divisional Magistrate, or when he is specially empowered in this behalf by the Local Government, a Magistrate of the first class receives information that any person within the local limits of his jurisdiction earns his livelihood, wholly or in part, by unlawful gaming or by promoting or assisting in the promotion of unlawful gaming he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in Section 110 of the Code of Criminal Procedure, 1898; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise.

APPENDIX E

BOMBAY ACT APPLICABLE TO CERTAIN INDIAN STATES

Bombay Prevention of Gambling Act, 1887

No. 5198, dated the 26th September, 1927.—In exercise of the powers delegated under the Indian (Foreign Jurisdiction) Order in Council, 1902, by the Governor General in Council, in the notification of the Government of India in the Foreign Department, No. 2859-1 A., dated the 19th June, 1903, and of all other powers enabling him in this behalf the Governor in Council is pleased to apply to the administered areas of the Mahi Kantha Political Agency, Viz., the Thana Circles of Bawishi, Gadwada, Katosan, Sabar Kantha, and Vatrak Kantha, and the Sadra Bazar (hereinafter referred to as "the said territories") the Bombay Prevention of Gambling Act, 1887, (Bom. IV of 1887) in so far as the same may be applicable.

Provided, first, that references to British India in the said Act, as so applied, shall be read as references to the said territories.

Provided, secondly, that for the purpose of facilitating the application of the said Act, any Court in the said territories may construe the provisions thereof with such alterations, not affecting the substance, as may be necessary or proper to adopt it to the matter before the Court. (*Bombay Government Gazette, 1927, pt. I, p. 2254.*)

APPENDIX F

PUBLIC GAMBLING ACT APPLICABLE TO CERTAIN INDIAN STATES

Public Gambling Act, 1867

Extension of the Act to places named.

No. 7364, dated the 23rd, November, 1894.—In exercise of the power conferred by section 2 of Act III of 1867 (The Gambling Act) as applied to the territories administered by the Agent to the Governor General in Baluchistan as such Agent, the Agent to the Governor General is pleased to extend the whole of the provisions of the said Act to the following local areas in the districts of Quetta, Zhob, and the Bolan Pass :—

Quetta District

- (1) The civil and military stations and the native town of Quetta ;
- (2) The Kansi and Siriab villages ;
- (3) The railway stations and bazars (if any) at—
 - (a) Beleli, and
 - (b) Kuchlak.

Zhob District

- (4) The civil and military stations and native towns at—
 - (a) Fort Sandeman, and
 - (b) Loralai.

The Bolan Pass District.

- (5) The bazars at Desht, Pirpunja, New Mach, Bibinanai, Kirta, and Rindi, and
- (6) The railways stations and bazars at Kolepur, Dozan, Hirok, Mach, Ab-i-gum, Chiderzai, Pishi, and Nari bank. *Gazette of India, pt. II, 1894, p. 1154).*

Extension of the Act to “the railway stations and bazars at Mushkaf and Panir in the Bolan Pass District.” *No. 3262,*

dated the 11th May, 1898.—Not reprinted. (*Gazette of India, pt. II, 1898, p. 586*).

Extension of the Act to “the Head quarters of the Tahsils and Sub-Tahsils

(1) Sinjawi (including the bazar at Smalan), (2) Barkhon, (3) Kohlu, in the Sinjawan Railway District. *No. 4280, dated the 16th May, 1902.* Not reprinted. (*Gazette of India, pt. II, 1902, p. 585*).

Extension of the Act to “the railway stations and bazars (if any) at

(1) Nishpa Tunnel, (2) Sheikh Wasil, (3) Godi Sheikh Wasil in the Bolan Pass and the Nushki Railway District.” *No. 260, dated the 6th January, 1904.*—Not reprinted. (*Gazette of India, pt. II, p. 100*).

Extension of the Act to “the railway stations and bazars (if any) at—

(1) Mastung Road, (2) Kanka, (3) Kirdagap, in the Bolan Pass and Nushki Railway District.” *No. 533, dated the 2nd. December, 1907.*—Not reprinted. (*Gazette of India, pt. II, 1907, p. 1779*).

Extension of the Act to “the railway stations and bazars (if any) at

(1) Mithri, (2) Lindsay, (3) Bellpat, (4) Nuttall, (5) Temple Dera, (6) Jhatpat”. *No. 7363, dated the 23rd November, 1894.* Not reprinted.—(*Gazette of India, 1894, Pt. II, p. 1155*).

Extension of the Act to—

(1) The Bazar at Nushki, (2) The Bazar at Dalbandin, (3) All the railway stations within the limits of the Chagai District. *No. 579-J., dated the 23rd May, 1929.*—Not reprinted. (*Gazette of India, 1929, pt. II-A., p. 233*).

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